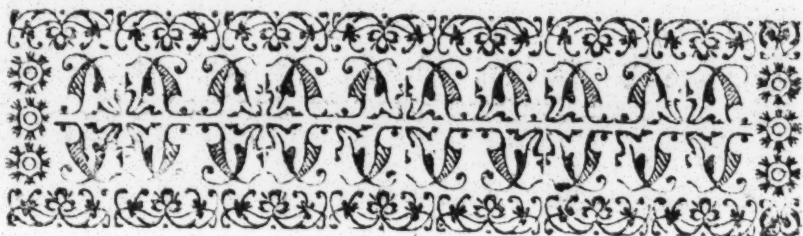


~~15. 11. 17~~
15. 9. 17
A SOLUTION
OF AN
Ancient and Modern
QUESTION;
OR A
DISSERTATION
Concerning the proper
JUDGE
OF A
Criminal Ambassador.

Wherein the Opinion of *Grotius* upon
that Subject is explain'd, consider'd
and defended.

R
By *Richard Zouch* L. L. D. sometime Regius
Professor of Civil Law at Oxford.

L O N D O N,
Printed for *Thomas Woodward* at the Inner-
Temple-gate in Fleet-street. 1717.



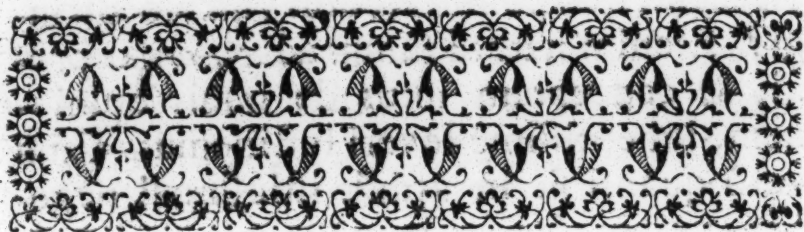
Venerabilis Viri

D. JOHANNIS OWEN, S.T.D.

Vice-Cancellarii Oxon:

Approbatio.

 D. Iffertationem tuam V. C. de Legati delinquentis Judice competente, magnâ cum voluptate, neque utilitate minore perlectam, non sine maximis quas agere possum gratiis, quod me eam legendi beneficio afficere volueris, tibi remitto. Cùm enim ob nullam aliam rationem, me aliquid in Jure gentium intelligere putem, quàm quòd opera tua quæ Eruditis omnibus ubique probantur, mihi mirificè
pla-



H.C.
JOHN OWEN, Doctor in Divinity, being Vice-Chancellor of the University of Oxford, when our Author Dr. Zouch wrote this Book, he was desirous to have his Approbation of it before Publication; and having sent the Copy to him for his Perusal, the Doctor was pleas'd to write him this Letter.

S I R,

I Have read your Dissertation concerning the proper Judge of an Ambassador, that transgresses the Laws of the Country where he resides, with great Satisfaction and Benefit; and I give you my heartiest Thanks that you did me the favour of an Opportunity to peruse it: And should I have had no other Reason to Imagine that I have any Knowledge in the Law of Nations, than that all your Works, which have the Approbation of the Learned eve-

placeant, quo possim arctiori vinculo astrin-
gi? Etenim naturâ sumus ad φιλαυτίαν pro-
ni, & conceptam intus de nobis opinio-
nem, lubentissimè foveri sustinemus. Cùm
verò quanti sit in arduis istiusmodi nego-
tiis, quibus rerum humanarum momenta
pensitantur, veritatis luce perfundi, ini-
quus, forsitan non sim æstimator, inde verò
quali me ornâsti beneficio conjicere possis.
Grotium sanè tuum ego virum summum,
atque extra omnem ingenii aleam positum,
semper judicavi. Quamvis enim in non-
nullis Religionis Capitibus, iisque gravis-
simis ab eo diversissimè sentio, in omni ta-
men literaturâ, præsertim Juris omnis Na-
turalis, Gentium & Civilis Romanorum,
cognitione eum ultra humanitatem pænè
sapuisse nemo libentiùs concedet. Hisce
rebus quicquam ei simile esse vix credo.
Quin verò ejus Sententia de Legati de-
linquentis Judice competente mihi antea
nota, & probata, cùm tu eam acumine,
judicio, eruditione Hyperaspiste Grotiano
dignis, ornatè & dilucidè exposueris, mul-
tisque insuper novis argumentis munitam,
objectionibus liberatam, variis Exemplis
ornatam dederis, uti in istis pleno sapi-
pectore, cordatis omnibus tandem omni
ex parte sit facturum satis nullus dubito.
Inter eos ideo qui Authores tibi sunt, li-
brum.

ry where, wonderfully please me; Could a greater Obligation be laid upon me? For all Mankind is subject to Self-Love, and we are very ready to nourish any good Opinion we have conceiv'd of our selves. Seeing therefore I am not perhaps an utter Stranger, of what moment it is, in arduous Affairs of this kind, to penetrate into their true State, and set them in a due Light, you may from thence easily guess what a Favour you have done me. I have always indeed look'd upon your Author Grotius to be a very Great Man, and almost uncomparable; and tho' in some very weighty Points of Religion, his Sentiments and mine are vastly different, yet no body is readier to allow him, in a manner, to have excell'd all Mankind in all sorts of Literature, and especially in his profound Knowledge of the Laws of Nature and Nations, and of the Roman Civil Law: I can scarce think, that ever any body came up with him in that respect. But forasmuch as I was not before unacquainted with, and approv'd of his Judgment concerning the competent Judge of a Foreign Minister, who transgresses the Law of the Country where he resides; and seeing you have explain'd it with that Perspicuity, Judgment, and Learning, as would have become Grotius himself; and over and above that, have strengthen'd it with many new Arguments, clear'd many Objections that might be rais'd

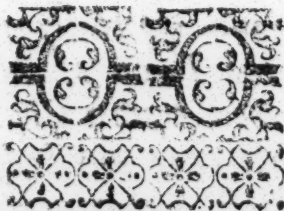
brum hunc super eâ re exaratum in lucem
proferendi, ita ut ad Doctorum manus
perveniat, nomen meum lubens profiteor,
atque pro ratione officii quod hic loci
mihi incumbit, eum typis mandari per-
mitto.

Tuus JOH. OWEN

10 Martii

Vice-Can. OXON.

1656.



Nobilis-

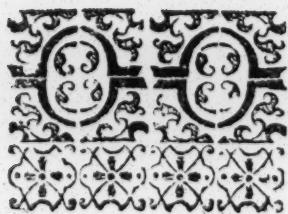
rais'd against it, and illustrated the whole with various Examples: As all those shew your Ability on the Subject, I make no manner of doubt but all impartial Men of all sides will be satisfied with it. And therefore I am very ready and desirous this Work should be made Publick, for the Benefit of the Learned; and I do, by virtue of my Office, hereby license the Printing of it: who am,

Yours,

March 10.
1656.

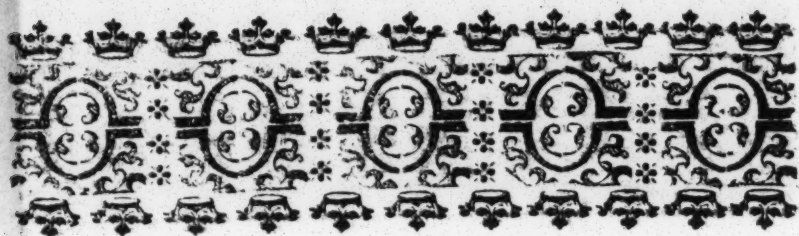
JOHN OWEN,

Vice-Chan.

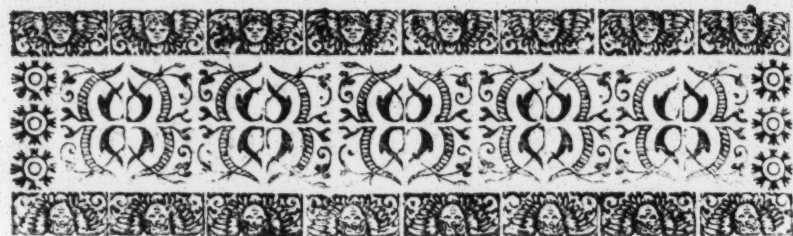




Nobilissimo & Honoratissimo Domino Henrico Marchioni de Dorchester, Comiti de Kingston, Vice-Comiti de Newark, Baroni Pierrepont & Manvers. Eruditione Generis Omnifariam, præsertim Juris Civilis Romani Prudentia Ornatissimo. Necnon, Literatorum Fautori Benignissimo suus hæc sua, D. D. Lasouchius.



TO the Most Noble and
Honoured Lord, Hen-
ry Marquess of Dorcester,
Earl of Kingston, Viscount
Newark, Baron Pierrepont
and Manvers : Adorned in
all Kinds of Learning, espe-
cially in the Civil ; and the
most Liberal Patron of this
learned Treatise. Is dedica-
ted by his Lazouch. The
Approbation of Dr. John
Owen Vice Chancellor of
Oxon.

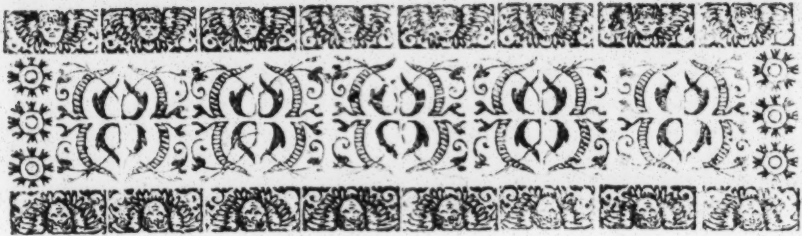


PRÆFATIO

A D

LECTOREM.

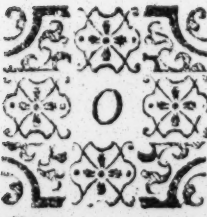
HU M anno salutis 1653.
Novemb. 22. infeliciter
accidisset, ut insano, licet
præmeditato tumultu, à
familiâ Legati Regis Portugalliæ (cu-
jus Legati frater Author præcipuus ha-
bebatur) concitato, in novo Excambio
Londini, nobilis Anglus, nihil mali
cogitans explosa bombarda, indignissimè
occideretur, Eminentissimus Dominus
Protector, non solum de sanguine sub-
diti Angliæ, sed etiam de Legati, quod
perhibebatur, Privilegio, sollicitus, Præ-
cipuos



P R E F A C E

T O T H E

R E A D E R .

 *N the Twenty Second of November 1653. there hap-
pen'd an unlucky Accident
in a mad but premeditated
Riot, which was raised by the Retinue
of the Portuguese Ambassador, chiefly
upon the account of his Brother. For
an English Gentleman walking in the
New-Exchange at London, and think-
ing no harm, was basely kill'd by a
Pistol Shot. The most Eminent the Lord
Protector, shewing a just Concern, both
for the Blood of an English Subject, and*
B *the*

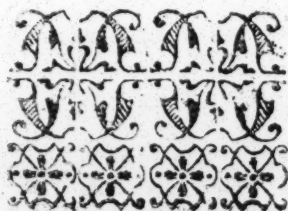
cipuos Juris Anglicani, & Juris Civilis Peritos, consuluit, quomodo cædes tam nefaria vindicaretur, qui cùm inter se minimè convenirent, tandem ipsius Celsitudini visum est, Summo Justiciario & duobus aliis, totidem de gente Nobilium, & tribus Juris Civilis Doctoribus, negotium cognoscendum & dijudicandum delegare, coram quibus cùm Legati frater, cum aliis de familia reis, sisteretur, ille (quem nonnulli Legationis socium opinabantur) se Legatum Regis sui, nec cujusquam alterius Jurisdictioni subditum venditabat, & Literas Regis Portugalliæ proferebat, ex quibus, id tantum innouit, quod Rex in animo habuit, ipsius fratrem brevi revocare, eique potestatem facere, sua negotia in Angliâ procurandi; Quod cùm neutiquam, ad Legati auctoritatem sufficere videretur, summotâ de Privilegio Legati personæ debito, consideratione, ut Ipse cum aliis de crimine sibi objecto responderent, imperatum est. Qui cum crimen non agnoscerent, Testes producti,

the pretended Privilege of an Ambassador, consulted the most eminent Professors, both of the Common and Civil Law, how such a barbarous Murder might be punish'd : But these disagreeing among themselves, his Highness thought fit to leave the Decision of this Affair to a Court of Delegates, consisting of the Chief Justice, and Two other Judges, the same Number of Gentlemen, and Three Doctors of the Civil Law. When the Ambassador's Brother, and the other Offenders, were brought before this Court, he, who was supposed by some to be a Colleague in the Ambassy, vaunted there he was his King's Ambassador, and subject to the Jurisdiction of no one else ; but producing the King of Portugal's Letters, all that appear'd from them was, that the King intended in a little Time to recal his Brother, and to give him Commission to manage his Affairs in England. But this being judged insufficient to prove him an Ambassador, he was, without any further regard to the Privileges of that Character,

ducti, & jurati vivâ voce rem omnem,
prout gesta erat declararunt, unde sin-
guli ex more Angliæ convicti, morte
multandi meritiò condemnati sunt, quo
supplicio Legati Frater, postquam fu-
gam tentasse compertus esset, ejusque
famulus, natione Anglus, affecti sunt,
Huic judicio, cum Author Libelli, de
Jure & Judicio inter Gentes, unus
Doctorum Juris Civilis interfuisset, qui
in quæstione, de Legato delinquente
puniendo, prout in multis aliis, Hu-
gonis Grotii (qui tamen non idem de
Legati Comitibus & familiâ, quod de
ipso Legato statuit) sententiam probare
visus est, in re tam magni momenti o-
peræ pretium duxit, quid Juri gentium
sit magis consentaneum, altius indagare;
In quem finem de eâ re Authores quot-
quot invenire potuit, seriò perlegit, &
in iis, aliunde petita, sedulò investiga-
vit, & quæ pro Immunitate Legati,
& contra eam videbantur, fideliter col-
legit, digessit, & expendit, & cum mi-
noris ponderis viderentur, quæ contra
Grotii sententiam, quam quæ pro eâ
faciunt,

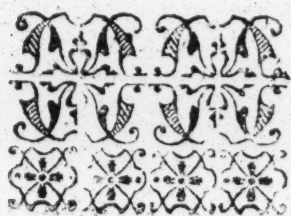
rafter, order'd himself as well as the rest, to plead to the Indictment, who accordingly pleaded not Guilty. But Witnesses appearing and relating the whole Matter of Fact upon Oath, they were all convicted and condemn'd to die. The Ambassador's Brother having been discover'd in an attempt to make his Escape, was afterwards executed, together with an English Servant of his. The Author of a Book entitled, *De Jure & Judicio inter Gentes*, being of the Civilians, present at this Tryal; and who in the case of punishing a criminal Ambassador, seems to agree with Hugo Grotius as he does in many other Cases, has thought it worth his while in an Affair of such Importance, to examine farther what is more agreeable to the Law of Nations. To this Purpose he carefully read over all the Authors he could meet with on this subject, diligently observing what they had borrowed from others; and having faithfully collected, digested and consider'd the Arguments for, and against the Im-

faciunt, quid de iis ipse animadvertet,
& senserit aliorum etiam iudicio,
trutinanda exhibere, non dubitavit, id
in primis persuasum habens, immuni-
tatem Legati quatenus à Grotio statu-
itur, & ad Communionem, & Pacem
inter Principes, & Respublicas tuen-
dam summè conducere, nec sub cautio-
nibus ab eo limitatis, permissam, cujus-
quam Principis Saluti, & Imperio frau-
di aut præiudicio esse posse.

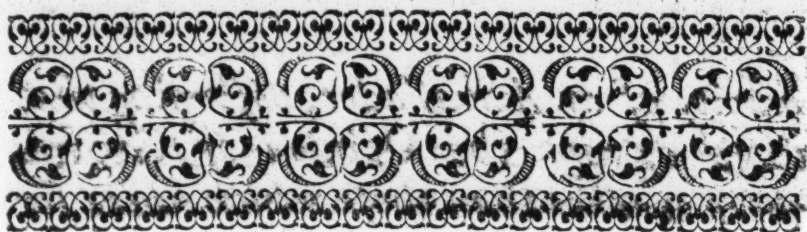


Cap. 1.

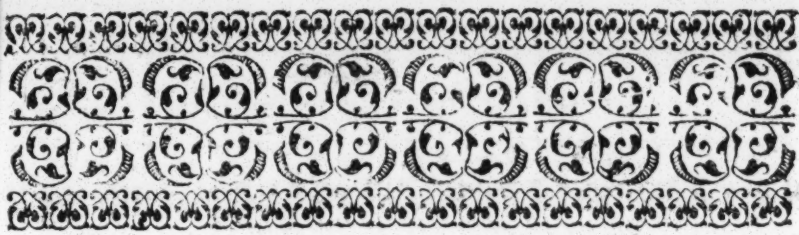
munity of an Ambassador, observing that those against the Opinion of Grotius were weaker than those which were for it ; he made no scruple of submitting his own Thoughts and Observations to the Examination of the Publick ; being fully satisfied that the Immunity of an Ambassador, as determin'd by Grotius, has the greatest tendency to preserve Peace and Commerce between Princes and States ; and that if it be receiv'd under those Limitations which he has settled, it can never deceive or injure the Safety and Government of the Prince.



Chap. I.



- Cap. I.* **D**E V. C. H. Grotii de Legati delinquentis Judice competente sententiæ, ejusque explicatio. *pag. 1.*
- Cap. II.* De Rationibus pro Legati immunitate. *p. 26.*
- Cap. III.* De Rationibus contra Legati immunitatem. *p. 46.*
- Cap. IV.* De Responsionibus, ad Rationes contra Legati immunitatem. *p. 62.*
- Cap. V.* De Exemplis pro Legati immunitate. *p. 94.*
- Cap. VI.* De Exemplis contra Legati immunitatem. *p. 108.*
- Cap. VII.* De Observationibus de Exemplis contra Legati immunitatem. *p. 114.*
- Cap. VIII.* De Argumentis ex Jure Civili, pro immunitate Legati. *p. 146.*
- Cap. IX.* De Argumentis ex Jure Civili contra Legati immunitatem. *p. 154.*
- Cap. X.* De Responsionibus, ad Argumenta ex Jure Civili, contra immunitatem Legati. *p. 164.*
- Cap. XI.* De Opinionibus aliorum Authorum quæ ad Grotii sententiam de
- im-

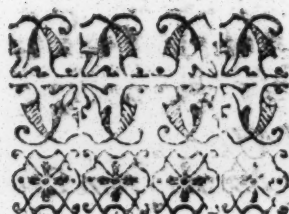
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- Chap. I. **G**rotius's Opinion herein explain'd. Page 2.
- Chap. II. Arguments for the Immunity of Ambassadors. p. 27.
- Chap. III. Arguments against the Immunity of Ambassadors. p. 47.
- Chap. IV. Answers to the foregoing Arguments. p. 63.
- Chap. V. Examples for the Immunity of Ambassadors. p. 95.
- Chap. VI. Examples against the Immunity of Ambassadors. 109.
- Chap. VII. Observations upon the Examples alledged against the Immunity of Ambassadors. p. 115.
- Chap. VIII. Arguments from the Civil Law for the Immunity of Ambassadors. p. 147.
- Chap. IX. Arguments from Civil Law against the Immunity of Ambassadors. p. 155.
- Chap. X. Answers to the Arguments from the Civil Law against the Immunity of an Ambassador. p. 165.
- Chap.

immunitate Legati propius accedunt. p. 174.

Cap. XII. De Opinionibus Authorum qui ab H. Grotii sententiâ de immunitate Legati magis dissentiunt. p. 184.

Cap. XIII. De Opinionibus aliorum Authorum censura Grotii, ejusque assertoris animadversiones. p. 188.

Cap. XIV. De Judice comitum & Familiæ Legati delinquentium competente. p. 198.

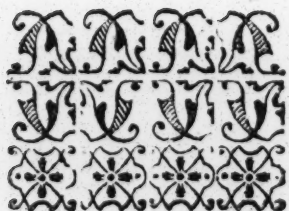


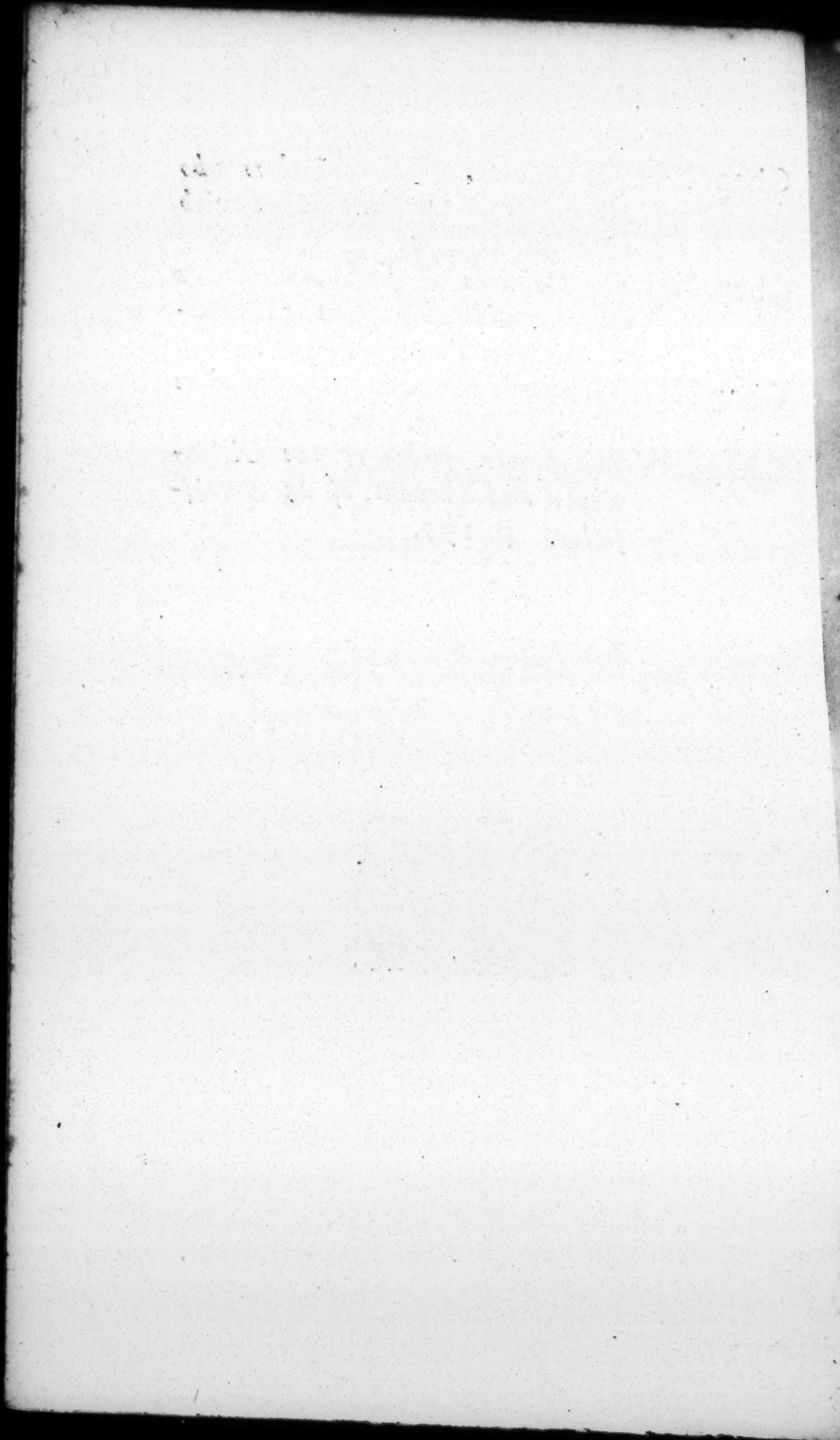
Chap. XI. *The Opinions of other Authors who are nearly of the same Mind with Grotius.* p. 175.

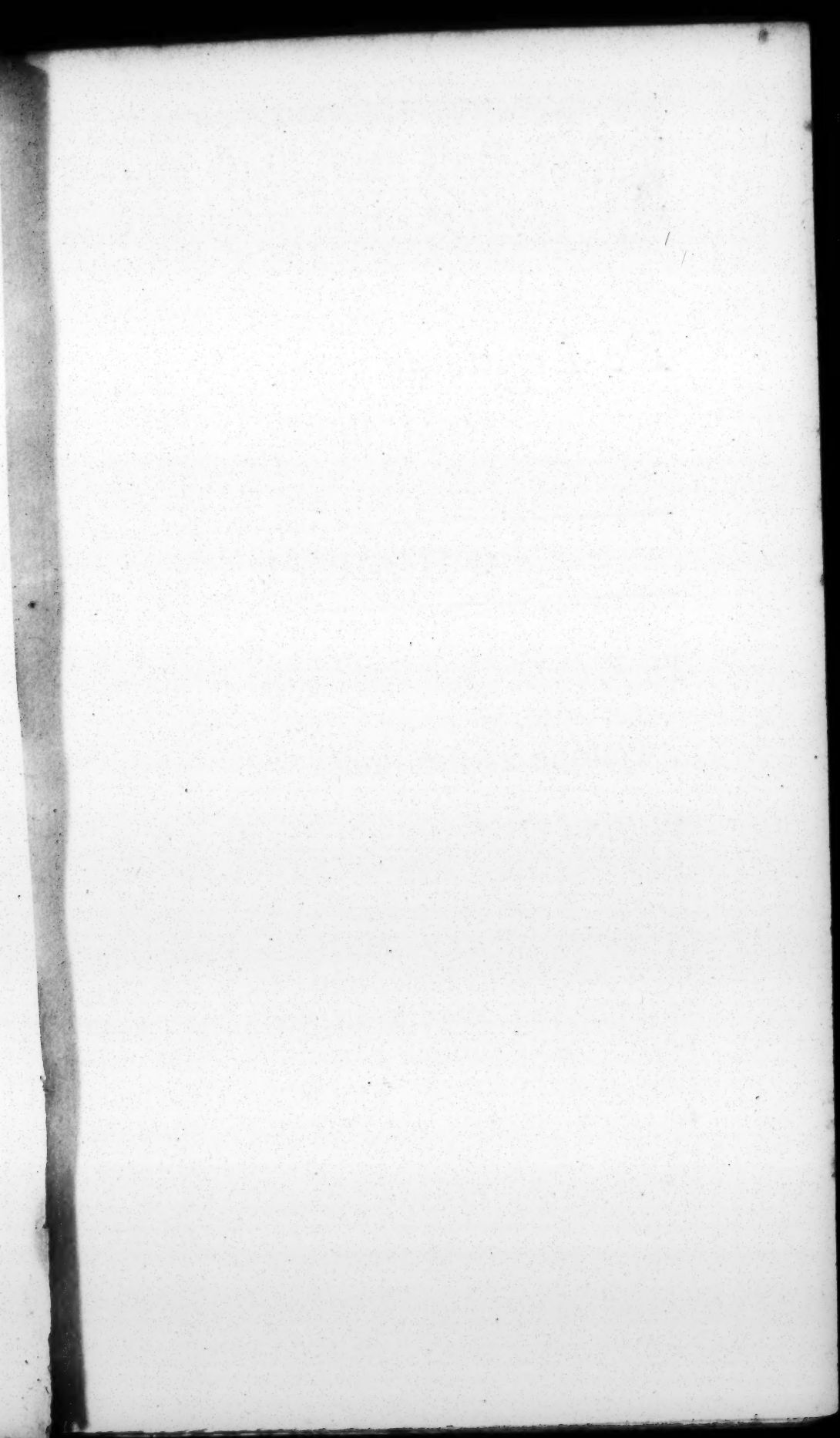
Chap. XII. *The Opinions of such Authors as differ considerably from H. Grotius in this Point.* p. 185.

Chap. XIII. *Grotius's Censure of the Opinions of other Authors.* p. 189.

Chap. XIV. *The proper Fudge of the Attendants and Servants of an Ambassador.* p. 199.







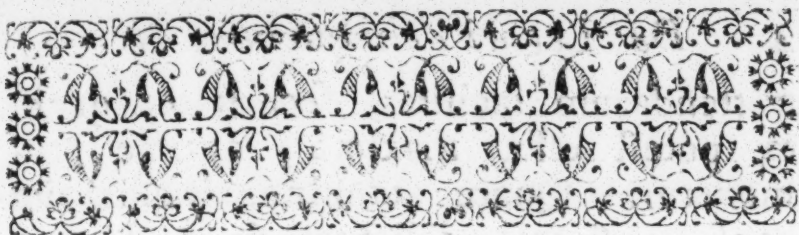
*De Legati delinquentis judice
competente.*

C H A P. I.

*De V. C. H. Grotii, de Legati delinquentis
judice competente, Sententiæ
ejusque explicatione.*

JUS Legationis, inquit * *H. Grotius*, non ut Jus Naturale, ex certis rationibus certo oritur; sed ex voluntate Gentium modum accipit. Potuerunt enim Gentes, aut omnino cavere Legatis, aut cum certis exceptionibus; nam & hinc utilitas stat poenæ in gravia delinquentes, & inde utilitas Legationum; quarum

* *De jure Belli & Pacis lib. 2. cap. 8. § 4*
mitten-



The Proper Judge of a Criminal Envoy.

CHAP. I.

Grotius's Opinion herein explain'd.

THE Privilege of Ambassadors by the Law of Nations proceeds, says Grotius, not, as the Law of Nature does, upon sure Principles; but is determin'd by the consent of Nations. For they might choose to provide for Ambassadors either by general Laws or particular Exceptions: Since 'tis expedient on one side to punish such as are greatly Criminal, and on the other is the advantage of Embassies, which are the most easily sent under

4 *De Legati delinquentis, &c.*

mittendarum facilitas, securitate, quanta potest esse, maximâ, optimè promovetur. Quare omnino, inquit, ita censeo; si tale delictum sit à Legato commissum, quod contemni posse videatur, dissimulandum esse, aut Legatum, jubendum è finibus excedere. Si crimen sit atrocius & ad publicum malum spectans, mittendum Legatum ad eum, qui misit, cum postulato, ut eum puniat aut dedat. Ut obviam eatur imminenti periculo, si nulla alia ratio sit idonea, & retineri & interrogari Legatum posse. Si vim armatam intentet Legatus, posse occidi; sed per modum naturalis defensionis, non per modum pœnæ.

Cùm omnis communio humana à Justitiâ pendeat, & ad Justitiam tuendam Judicia plerumque sint comparata; inter eos, qui superiores habent, penes superiores est judicium. Inter eos, qui nullum superiorem agnoscunt, veluti inter Principes & respublicas, quarum summum est imperium, Controversiæ non nisi ancipiti belli eventu ordinariè dirimuntur: Hinc oritur quæstio, Quis Legati delinquentis, qui duplicem personam, & sui privatam, & publicam sui principis sustinet, sit Judex competens? An is, qui, ubi legationem obit, jurisdictionem habet? An Princeps, cui
Naturâ

the Encouragement of the safest Protection. Therefore, says he, my Opinion is entirely this; if an Ambassador has committed a slight Fault, either no Notice shou'd be taken of it; or else the Ambassador shou'd be order'd to quit the Country. But, if it be a Crime of a more heinous Nature, and mischievous to the Publick, the Ambassador ought to be return'd to him that sent him, with demand either to punish or deliver him up. To provide against an eminent Danger, for want of a more proper Method, the Ambassador may be both Confined and Examined; and if he brings an Armed Power against the State, he may then be kill'd, tho' not by way of Punishment, yet by way of Self-defence. De Jur. B. P. 2. 18. 4.

Since Justice is the support of all human Society; and Judgments are generally provided for the Security of Justice, the power of Judicature is lodged in the Hands of Superiors, where there are any such. But Princes and Sovereign States, who acknowledge no Superiors, have ordinarily recourse to nothing but the doubtful Issue of War, to decide their Controversies. Here then begins our Question; since an Ambassador sustains a double Character, namely the publick one of his Prince, as well as his own private Character, who is his proper Judge when he is Criminal? Whether the Sovereign, where he resides; or

6 *De Legati delinquentis, &c.*

Naturâ subditus est, & cujus legatione fungitur? De quâ questione *H. Grotius* primò præmittit quo jure sit definienda. Secundò, quanam in eâ quæstione præcipuè sunt spectanda. Tertiò, exponit quousque *Judex territorii*, ubi quis legationem obit, procedere possit, & quantum ei, cujus est Legatus, primò, in iis, quæ ad ipsum; postea, in aliis, quæ ad ejus comites spectant, sit permittendum.

I. Jus, quo hæc quæstio est definienda, Jus gentium voluntarium statuit. In primordiis disquisitionum de Jure Belli & Pacis *Aristotelem* secutus; Jus, prout est Regula actuum Moralium, in Naturale & Voluntarium distribuit. Illud definit dictatum rectæ rationis; quod omnium Animis à Naturâ, seu potius à Deo, inditum est, quod agendum est, præcipiens; & quod vitandum est, prohibens. Hoc, quod ab Hominum voluntate, & consensu Originem ducit, voluntarium dicit. *Jurisconsulti Romani*; alii, Juris tres species; Naturale scilicet, Gentium, & civile constituent: Alii, duas tantum; Jus gentium, quod naturalis ratio inter omnes homines; & Jus Civile, quod quisque Populus ipse sibi constituit. Ex quâ divisione & Juris Gentium definitione multi inducti sunt, ut Jus Gentium, nihil aliud, quam Jus Naturale

his Natural Prince, whose Minister he is? In this question, H. Grot. shows first by what Law it ought to be determin'd. 2dly, What is chiefly to be consider'd in it. 3dly, How far the Sovereign where the Ambassador resides, may proceed against him; and how much is left to the discretion of his Principal, in relation both to himself and his Attendants.

I. The Law, by which this Question is to be decided, he determines to be the Arbitrary Law of Nations. In the beginning of his Book of the Law of War and Peace he agrees with Aristotle in dividing Law, as it is the Rule of moral Actions, into Natural and Arbitrary. The former he makes to be the dictate of right Reason, implanted in the Minds of all Men by Nature, or rather by the God of Nature; commanding what is to be done, and forbidding what is to be avoided. The latter he calls Arbitrary, because it arises from the will and agreement of Men. Some of the Roman Lawyers make three sorts of Law; viz. the Law of Nature, the Law of Nations, and the Civil Law. Others make only two sorts; the Law of Nations, establish'd by natural Reason among all Men; and the Civil Law, enacted by each particular State. Hence many have been brought to think there

turale esse, opinentur. Ad hunc Errorem tollendum, *Grotius*, præter jus Naturale, Jus gentium Voluntarium statuit; quod, prout tradit Justinianus, usu exigente, & humanis Necessitatibus, gentes humanæ postea sibi constituerunt. Ad quorum omnium conciliationem & elucidationem fortè non ineptum erit, Jus naturale & jus gentium duplex statuere; ita ut jus naturale habeatur, primò, quod ab Affectibus hominis cum aliis Animantibus communibus; Secundò, quod à naturali ratione hominibus propria profluit: & Jus Gentium, primò quod in unaquaque gente ad communionem inter personas singulas; Secundò, quod ad communionem inter diversas gentes conservandam, introductum est. Ex jure naturali priori, provenit studium sui tuendi, liberè agendi, alios procreandi, & nutriendi. A posteriori, procedunt erga Deum Religio, ut Parentibus & Patrie pareamus, nec non præcepta communia, Honestè agendi, suum cuique tribuendi, alterum non lædendi. Item ex jure gentium priori, Dominiorum distinctio, contractus, Obligationes sunt inventæ. Ex posteriori, discretæ gentes, commercia instituta, fœdera inita & bella etiam introducta. Quod posterius jus gentium magis propriè Jus inter

is no difference between the Law of Nature and the Law of Nations: And therefore Grotius, to remove this mistake, has made an Arbitrary Law of Nations, besides the Law of Nature. Which Arbitrary Law was settled afterwards among the several Nations of Mankind, according as their Occasions and Necessities required. But to reconcile and clear up these things, perhaps it will not be amiss to distinguish both the Law of Nature and the Law of Nations into two Sorts; so that the Law of Nature may be either, 1st, that which proceeds from those Affections, which Man shares in common with other Animals; or 2dly, that which flows from natural Reason peculiar to Man. And the Law of Nations may be either, first the Laws of every particular Nation introduced therein to preserve the Society between each individual Member; or 2dly, that which maintains the Society between different Nations. From the former Distinction of the Law of Nature we have the natural Inclinations of self-defence, liberty, procreation and education of Children. From the latter, our duties to God, our Parents and our Country, the common Rules of honesty, to give every Man his Due, and to injure no Body. From the former distinction of the Law of Nations proceed the distinction of Possessions into Property, Contracts and Obligations.

inter gentes Appellari potest; quod apud Romanos speciali nomine, Jus Feciale vocabatur, quod, uti *Cicero* tradit, in conditionibus Regum, Populorum, exterarumque Nationum, in omni denique Pacis & Belli negotio, versabatur. Ex quo jure gentium voluntario, de legationibus controversias dijudicandas rectè censet. Non quod in iis nulla juris naturalis ratio sit habenda; sed quia jus, quod *majori* communi, ei, quod *minori* inservit, cedere debeat, cum nonnulla in hoc jure Occurrant, quæ à Jure naturali recedere videntur. Jure enim naturali omnes homines liberi nascebantur. Ex hoc jure orta sunt bella, & Captivitates secutæ, & servitutes, quæ naturali juri sunt Contrariæ. Sed & hoc jure quædam permittuntur, quæ jure Naturali prohibentur; & quædam vetantur, quæ jus Naturale permittit. Prioris Exemplum sunt repræfaliæ, Quippe *Zeno* Imperator æquitati Naturali contrarium dicit, ut pro alienis debitis alii molestantur. Jure tamen Gentium inductum apparet, ut pro eo, quod debet præstare Civilis Societas, aut ejus Caput, sive per se primò, sive quod alieno debito jus non reddendo se quoque obstrinxerit, pro eo teneantur & obligentur bona omnia eorum, qui tali Societati aut capiti subsunt. Posterioris
Ex-

gations. From the latter, Rules of Commerce are stated, Alliances made, and even the practice of War introduced. This second sort of the Law of Nations may indeed more properly be stiled the Law between Nations, and was by the Romans distinguish'd by the particular Name of Jus Feciale; i. e. the Law of those things, wherein the Heralds were employ'd; extending, as Cicero says, to Treaties with Kings, States and Foreign Nations, and in a Word to the whole business of Peace and War. Now Grotius is in the right to think, that the Controversies about Embassies ought to be decided by this Arbitrary Law of Nations; not that the Law of Nature ought in this Case to be neglected, but because the Law of a larger Community ought in some Respects to yield to that of a smaller, since there are several things in this Law, which seem contrary to the Law of Nature. For by the Law of Nature all Men were born Free; but from this Law proceed Wars, Captivity and Slavery, which are all contrary to the Law of Nature. But some things are allow'd by the Law of Nations which are forbidden by the Law of Nature; and others are forbidden by this Law, which are allow'd by the Law of Nature. Reprisals are an Instance of the former. For the Emperor Zeno declares it contrary to natural Equity, to trouble

12 *De Legati delinquentis, &c.*

Exemplum ex eo colligitur, quod de *Bomilcare* (qui cum *Jugurtha Romam* veniens, ibi ex Mandato ejus *Massivam Massinissæ* nepotem obtruncari fecerat,) dixit *Sallustius*, Eum, comitem ejus, qui fide publicâ *Romam* venerat, reum factum magis ex æquo & bono, quam ex jure gentium; ubi jus gentium ab æquo & bono, sive à juris naturalis æquitate, distinguit: Quod ita ad eundem locum interpretatur *Ascentius Badius*, Æquum & Bonum postulet, inquit, ut qui publicâ fide sunt inviolabiles, ne ipsi alios impunè violent: Jus autem gentium postulabat, ut *Jugurthæ* comes ob fidem publicam tutus & inviolatus esset; & si *Romæ* interim deliquisse inveniretur, non ibi puniretur, sed in locum, *Numidiæ* scilicet, ubi fides publica ei data est, remitteretur, & ibi satis facere requireretur.

ble one Man for the Debts of another ; and yet it is plain that it is a Custom establish'd by the Law of Nations, that if any Civil Society, or the Head of such a Society be bound to satisfy a just Debt, contracted either by themselves or others, every Member and Subject of that Society is obliged to the extent of his whole Estate to make that Satisfaction. An Example of the latter, may be taken from the Story of Bomilcar related by Sallust. He had, it seems, at the instance of Jugurtha, whom he attended to Rome, procured the Assassination of Massiva the Grandson of Massinissa ; for which Fact he was arraign'd ; but this, says Sallust, was more agreeable to Equity and Reason, than to the Law of Nations ; since he was an Attendant on him, who came to Rome under the publick Protection. Here Sallust distinguishes between the Law of Nations, and Equity and Reason, or the Law of Nature, which Ascentius Badius upon the Place thus explains. Equity and Reason require, says he, that they who are render'd inviolable under the publick Protection, shou'd not be suffer'd to commit Outrages with Impunity. But the Law of Nations required that Jugurtha's Companion shou'd have been inviolably safe under the publick Protection ; and tho', while he enj'y'd that Security, he were a notorious Offender at Rome,

Secundò, in hâc quæstione spectandum
 asserit, quod ex alterâ parte Legationum
 utilitas prætenditur, ex alterâ utilitas pœ-
 næ in Legatos graviter delinquentes. Ita
 etiâ *Paschalius*; an Pœnalis, inquit, A-
 ctio in Legatum competat, est sanè anxia
 & nodosa quæstio, cujusque non est expe-
 dita Sententia. Nam si in eum vindicetur,
 violatur jus Legationis in personâ Sanctâ,
 quæ dicetur facta piaculum iræ alienæ; sin
 minus, scelestis dum impunè erit, ii de eo-
 rum facilitate, quos circumscripserunt, tri-
 umphabunt. De utilitate Legationum, Au-
 thor libelli, qui inscribitur Quæstio vetus
 & nova, ita scribit, Legationis usus Rebus
 publicis tantum affert Ornamenti & utili-
 tatis, adeoque ipsis necessarius exiit, ut
 nulla penitus rerum administrandarum per-
 fecta ratio, hoc sublato munere, constare
 possit. Etenim cum imperiorum causæ &
 Negotia non nisi literis aut nuntiis tractari
 & terminari queant; quis non videt illis
 publicæ Securitati & tutelæ non satis con-
 suli, quando negotia, quo reconditiora ma-
 jori fide ac silentio tegenda, eò literis con-
 credita facilius eliminantur, & in eorum,

quos

yet there he might not be punish'd, but be sent to Numidia, where the Assurance of Protection was first given him, and then Satisfaction might be demanded.

Secondly; Grotius tells us, we must consider in this Case, that the Advantage of Ambassies is pretended on one side; and the Expedience of punishing, on the other side, those Ambassadors that are highly Criminal. To this purpose Paschalius speaks, whether an Ambassador may be punish'd is a troublesome, knotty Question, and not easily resolved. For if Punishments be inflicted on him, the privileges of Ambassadors are violated in his sacred Person, which will then be said to fall by the highest Impiety a Sacrifice to Resentment. But if an Ambassador may not be punished, they who may be lawless with Impunity, will Insult the easy Temper of those they have impos'd on. The Author of a Book entituled, *quæstio vetus & Nova*, has these Words. The use of Ambassies is so honourable, beneficial and necessary to States, that there can be no exact Way to manage Business without it. For since the Affairs of Government can be transacted and concluded only by Letters or Ministers, 'tis plain the publick Safety is not sufficiently consulted by Letters, the Contents of which are never more easily discover'd than when they require the greatest Fidelity and Secrecy.

16 *De Legati delinquentis, &c.*

quos minime expedit, Manus incidat, sæpe intercidant, alias etiam intercipientur; Occurrant etiam interdum quædam adeo impedita atque implicata, ut per literas neque expediri commodè; neque, ut rei de quâ agitur magnitudo postulat, facile explicari disceptarive possunt. Quædam etiam inter agendum accidunt, vel agentibus in ipso tractatu emergunt, quæ ut provideri humanitus nequeunt, ita nec prescribi; in quibus omnibus, quod literis non talemus Legatorum Ministerio consequimur, ac tutissimè simul ac plenissimè perficimus. Si modo iis hæc provincia demandetur, quorum fides & industria nullam controversiam patiatur. Præterea quod sermo singulis, hic legatus imperiis. * Nam ut illius beneficio voluntatem & Affectus nostros alii aliis patefacimus, ita hujus Ministerio Principum consilia, ac mutua desideria, ultro citroque communicantur.

Cic. pro Rosc.

Tantum porrò est momenti in personâ Legati, ut in ejus manu sit aversos principes conciliare arma compescere, bello sedato pacem & concordias stabilire. Idem etiam non pauca de utilitate, quæ à Legatis puniendis provenit, sæpe differit. Hoc, inquit urgent pœnæ multiplices fructus; interest enim Reipublicæ ne ulla

Male-

crecy. They often fall into the most improper Hands; are sometimes lost, and other times intercepted. Business it self is sometimes so perplex'd and involved, that it cannot well be dispatched by Letters, nor easily be resolved and managed, as the Importance of the Subject would require. Some emergencies arise even in the very transacting of Affairs, which no humane Prudence can foresee and direct: In all which Cases the deficiencies of Letters are most safely and fully supplied by Ambassadors; especially if they be employ'd whose Fidelity and Diligence are unquestionable. Further, the Ambassador is to Governments what the use of Speech is to private Persons. For as by the help of this, we discover our Will and Affections to each other; so by the Service of that the measures of Princes and their mutual Wants are reciprocally known.

So important is the character of an Ambassador, that it is in his power to reconcile the differences of Princes, to restrain their Arms, and establish Peace and Concord. The same Author has a great deal relating to the Advantages resulting from punishing criminal Ambassadors. Many, says he, are the good effects of such Punishments, which plead strongly in their behalf; for 'tis the Interest of a State to suffer

18 *De Legati delinquentis, &c.*

Maleficia, à quocunque admissa, impunita maneant, tum maximè propter Exemplum. Hinc, inquit, & Legatis reis poenitendi, & cæteris innoxiiis ejusdem facinoris succedaneis sapiendi materia; illis ulterius nocendi facultas eripietur, his ab injuriis abstinendi & à sceleribus cavendi documentum præbebitur. *Grotius* vero censet, * quod utilitas Legationum utilitati quæ est à poenâ, in loco ubi Legati delinquant, præponderat; quia poena potest haberi per eum qui Legatum misit; &, si nolit, ab eo bello exigì, tanquam à criminis approbatore.

* *Libr. 2. c. 18. § 4.*

† C. Si quis Imp.

Tertiò, quousque Judex territorii ubi quis Legationem obit, contra delinquentem procedere possit, & quantum ei, cujus est legatio, permitti debeat, ita statuit. Primò censet si ejusmodi sit delictum quod contemni possit; utpote fortè, si Legatus apud Principem, ad quem missus est, liberius locutus fuerit, sine animadversione prætereundum esse. Quemadmodum † Imperatores eum etiam subditum suum, qui modestiæ nescius improbo petulantive maledicto eorum nomina lacefferat, noluerunt poenæ subjugari; quoniam, si id ex levitate procederet, contemnendum; si

no Crime to go unpunish'd, to prevent the ill consequence of a bad example. When Ambassadors are punish'd then, says he, they have a fair opportunity to show their repentance; and their Successors an easy way to grow prudent; the power of mischief is taken from the former, and the latter are fairly warn'd to keep clear from Outrages and Villanies. Grotius thinks the Advantages arising from Ambassies are much more considerable, than those which would accrue to the State from Punishments inflicted on Ambassadors, in that place where the Crime is committed. Since the Delinquent may as well be punished by his Principal; who, upon his refusal, may be compell'd to it by War, as an Approver of the Fact.

Thirdly, How far the supreme Judge of the Realm where the Ambassador resides, may proceed against him; and how much is left to the Principal, he thus determines. If the Fault be slight, suppose talking a little too freely about the Sovereign, it ought to be winked at. Thus the Emperors decreed that if any of their own Subjects should shamelessly and villainously abuse and insolently revile their Names, yet they should not be liable to punishment; since if it proceeded from levity, it ought to be slighted; if from madness, it ought to be pity'd; if from injury, it ought to be forgiven.

Secondly

ex infaniâ, miseratione dignum ; si ab injuriâ, remittendum censuerunt.

Secundò, si levius à Legato sit Periculum, utpote fortè, si speculator deprehensus fuerit, censet jubendum finibus excedere ; quemadmodum malo Hospiti jus hospitii renuntiari licuit. Ita Porsena, quod Tarquinii Legatos Romanos, qui obsides reducere polliciti & parati erant, violare conati essent, iis hospitium renuntiavit, jussitque eodem die castris excedere.

Tertiò censet, si crimen sit atrocius, & ad publicum malum spectans ; utpote fortè, si Legatus in Principem, vel statum Imperii ejus conjuraverit ; eum remittendum ad Principem, qui eum misit, cum postulato ut eum puniat aut dedat : Ita enim Jure Gentium introductum est ; ut sicut si Legatus ab iis, ad quos missus est, violatus sit, ii, qui violârunt ad Legati principem puniendi mittantur : ita, si Legatus eos, ad quos missus est, violaverit, à suo Principe ad eos, quos violavit, puniendus remittatur. Sic eum, qui Legatum hostium pulsâisset, Quintus Mutius hostibus dedendum esse respondit. Et qui Legatos Apollinatium & Carthaginiensium pulsârunt, iis à Romanis dediti sunt ; & qui Legatum Populi Romani interfecerat, à Demetrio Populo Romano dedebatur. De
jure

Secondly, If there be some little danger, suppose him a Spy for example, he ought to quit the Realm, as a Guest that behaves himself ill may justly be deny'd the right of Hospitality. Thus, because the Tarquins endeavour'd to assassinate the Roman Ambassadors, Porfena refus'd to entertain them any longer, and order'd them to leave his Army that very day.

Thirdly, If the Crime be of a deeper dye, and dangerous to the Publick; suppose, for instance, the Ambassador has conspired against the Prince or his Kingdom, he ought then to be return'd to his Principal, with a demand either to punish or deliver him up. For the common practise founded on the Law of Nations is this, that, as when an Ambassador has been injured, the injurious Persons are sent to his Principal to be punish'd; so when an Ambassador has done an injury, he ought to be return'd by his Prince to be punish'd by those he has injur'd. Thus Q. Mutius* was for surrendering him that had beaten the Ambassador of the Enemy. And they, that had assaulted the Ambassadors of the Apollinates and Carthaginians, were surrender'd to them by the Romans. He likewise that

* Liv. 15. 18.

jure etiam Legatum, qui deliquit, dedendi, non magis antiquum, quam celebre est exemplum Fabiorum, de quo scribit *Livius; cum Galli Clusinos, Etruriæ populum, bello premerent, tres Fabii Ambusti filii à Romanis ad Gallos missi, inter eos & Clusinos conferto prælio, urgentibus, inquit, fatis, contra jus Gentium Arma ceperunt: quin etiam Quintus Fabius, extra aciem evectus equo, Ducem Gallorum intra Signa Etruscorum ferociter incurfantem, per latus hastâ transfixum occidit. Omissâ inde in Clusinos irâ, Galli Legatos mittunt questum injurias, postulatamque, ut, pro violato jure Gentium, Fabii dederentur: Legati, cum ea sicut erant mandata exposuissent, Senatui factum Fabiorum non placebat, & jus postulare Barbari videbantur: Sed nè id, quod placebat, decernerent in tantæ Nobilitatis viros, ambitio obstabat: Itaque ne penes ipsos culpa esset, (eladis forte bello Gallico accipiendæ) cognitionem de postulatis Gallorum ad Populum rejiciunt; ubi tanto plus gratia atque Opes valere, ut, quorum de pœnâ agebatur, Tribuni Militum insequentem Annum crearentur. Quo facto non secus, quam dignum erat, inquit Livius, infensi Galli ad suos redierunt. Ex quo apparet quid de jure Gentium Lega-

had kill'd a Roman Ambassador was by Demetrius deliver'd to the Romans. Livy sets down a very antient and remarkable Instance in the Fabii of this Law of delivering Criminal Ambassadors to be punish'd. When the Clusini, a People of Etruria, were hard beset by the Gauls, the Romans sent the Three Sons of Fabius Ambustus as Ambassadors to them. These at the impulse of the Fates, when the Gauls and Clusini were closely Engaged in Battle, took up Arms contrary to the Law of Nations; and Q. Fabius riding in the Front of the Battle, seeing the Gaulish General rushing boldly against the Etrusian Ranks, pierced his side with a Spear and kill'd him. The Gauls, now laying aside their quarrel with the Clusini, send Ambassadors to complain of these Wrongs, and demand the Fabii for breaking the Law of Nations. When the Ambassadors had deliver'd their Errand, the Senate was displeased at the Action of the Fabii, and acknowledged the demand of the Barbarians was just; but the Interest, the Fabii had gain'd kept the Senate from voting in the Case of those Noble Lords. They therefore to free themselves from the blame of any Misfortune which might possibly befall them in a War with the Gauls, refer the hearing of that Cause to the People, with whom Favour and Power were still so much more prevalent, that those very Persons, who
were

24 *De Legati delinquentis, &c.*

tos delinquentes postulandi & dedendi cum Gentes barbaræ, tùm Senatus Romanus censuerit. Eventus verò plus docuit, cum, quasi Diis infestis ex hac Occasione, Bello Gallico postea Roma, excepto Capitolio capta, devastata & incensa fuerit.

Quartò censet, ut obviam eatur imminenti periculo, Legatum retineri & interrogari posse; quia humana jura omnia ita sunt comparata, ut in summâ Necessitate non obligent. Ita, quamvis jure civili privati carceres sub gravi pœnâ sint prohibiti, neque liberi homines ullo modo sint cohibendi, Divus Marcus & Commodus Scapulæ Tertyllo rescripserunt; * si ipsi liquidò compertum esset, Ælium priscum in eo furore esse, ut omni intellectu caret, diligentius custodiendum esse; ac, si videretur, etiam in vincula conjiciendum: Quoniam, inquiunt, non tam ad pœnam, quam ad tutelam ejus & securitatem aliorum pertinebit.

Quintò censet Legatum, si vim arma-

* D. 13. de Off. Præs.

tam

were thus put upon their Trial, were created Tribunes of the People for the ensuing Year. This proceeding, says Livy, the Gaulish Ambassadors resented justly and return'd to their Countrymen. Hence it appears what was the judgment of barbarous Nations, and a Roman Senate about the right of demanding and surrendering criminal Ambassadors to punishment. But the Event proved this Law more plainly, since, as if the Gods were incens'd upon this Occasion, the whole City of Rome except the Capitol was taken, sack'd and burn'd in this Gallick War.

Fourthly, Grotius thinks, that to prevent an imminent danger an Ambassador may be confin'd and examin'd, because all humane Laws are so made as to loose their Obligation in Cases of the utmost Necessity. Thus, altho' private Prisons were strictly forbidden by the Civil Law under the severest Penalties, and Freemen might be arrested upon no Account, yet the Emperors Marcus and Commodus in a rescript to Scapula Tertullus determine; that if he is certain that Ælius Priscus is so far Mad as entirely to have lost his Reason, he ought to be more carefully guarded, and even put into Chains, if he thinks good; since, say they, this is done not to punish, but protect him and secure others.

D

Fifthly,

tam intentet, per modum naturalis defensionis occidi posse cui congruit quod tradit Paulus ; Qui cum aliter se tueri non possunt, damni culpam dederint, innoxii sunt ; vim enim vi defendere omnes Leges, omniâque jura permittunt. Sed non per modum pœnæ vel civilis justitiæ. Ex quibus omnibus conspicuum est, quod ex *H. Grotii* Sententiâ Legatus delinquens in loco, ubi legationem obit, nec puniendus, nec in judicio conveniendus sit.

C H A P. II.

De Rationibus pro Legati immunitate.

H. *Grotii* Sententia, quod Legatus delinquens in loco ubi legationem obit, nec puniendus nec judicio subjiciendus sit, hisce rationibus nititur.

Primò, quod Legati Persona Jure Gentium Sancta & inviolabilis habita sit.

Secundò, quod Legatus admissus fide publicâ muniatur.

Tertiò, quod Legatus Majestatem ejus, à quo missus est, repræsentet.

Quartò,

Fifthly, He thinks an Ambassador may be kill'd in Self-defence, for taking up Arms against the State. Agreeable to which is that of Paulus; that such as have committed an Injury are notwithstanding guiltless, if they had no other means to defend themselves; for 'tis allow'd by all manner of Laws to repel Force by Force. But an Ambassador may not be kill'd by way of Punishment or Civil Justice. From all this the Opinion of Grotius is plain, that a Criminal Ambassador may neither be punish'd, nor try'd where he resides.

CHAP. II.

Arguments for the immunity of Ambassadors.

THE Opinion of Grotius is grounded on these Arguments.

First, The Character of an Ambassador is sacred and inviolable by the Law of Nations.

Second, An Ambassador received as such is secured by the publick Protection.

Third, An Ambassador represents the Majesty of his Principal.

28 *De Legati delinquentis, &c.*

Quartò, quod Legatus exemptus sit è jurisdictione territorii in quo Legationem obit.

Primò, quod Legati persona sancta sit & inviolabilis ostendit. Quia passim, inquit, legimus, sacra Legationum, Sanctimonium Legatorum, sanctum inter Gentes Jus Legationum, &c. Immo, Legatos violare, non injustum tantum, sed etiam impium esse, confessione omnium, ait Philippus in Epistolâ ad Athenienses : Et Cicero, Legatorum Jus divino humanoque vallatum est præsidio, ut non modò inter Sociorum Jura, sed & Hostium tela verferetur incolume. In quibus innuitur, quod Legati Sancti habebantur respectu tam divinæ quam humanæ ultionis, quæ eorum violatoribus impendebat. Ad priorem spectat, quod Ammianus ait, Legatorum injurias sempiternus vindicat vigor Justitiæ; & quod Appianus, postquam mala, quæ Senonibus ob violatos Romanorum Legatos obtigerant, recensuisset, atque ita, inquit, Senones Nemesis ulta est. Ad posteriorem spectat quod refert Dionysius Halicarnassensis cum Laviniatum Legatos Sabini jugulâssent, & frequentes ab iis Legationes peterent, nè impunè abiret, Romulus eam Legatorum injuriam gravem, ut erat, & celeriter vindicandam esse ratus,

The Proper Judge, &c. 29

Fourth, He is exempt from the Jurisdiction of the Place, where he discharges his Ambassage.

First, He shows an Ambassador is inviolable, because says he, we meet in all Authors with such Expressions as these: The sacred rights of Ambassies, the sanctity of Ambassadors, the right of Ambassage, held Sacred among all Nations, &c. Philip, in his Epistle to the Athenians, says the violation of Ambassadors is acknowledg'd by all, to be not only unjust but impious. And Cicero says the Privilege of Ambassadors is fortified by the Protection both of God and Man; to make it remain secure as well among the Arms of contending Foes, as the peaceful Laws of Confederates. By which is meant that Ambassadors were accounted Sacred with regard to the Vengeance of God and Man, ready to fall on the Violators of those Rights. The Expressions of Ammianus and Appianus relate to the divine Vengeance; the Power of Justice, says the first, is always ready to revenge the Injuries done to Ambassadors. The latter having recounted the Judgments that befel the Senones for violating the Roman Legates, observes that thus it was divine Vengeance punish'd the Senones. Dion. Halicarn. gives an Instance of human Vengeance in the Case of the Sabines, who, tho' they demanded frequent Ambassies from the

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Lavi-

30 *De Legati delinquentis, &c.*

tus, ut proculcatâ lege sanctissimâ, scelerî obnoxios corripuit vinctósque Legatis abducendos tradidit.

Quod verò personis sacrosanctis non solum à privatorum injuriis, sed etiam à Magistratum judiciis immunitas debebatur, ostendit idem Dionysius, ubi de Tribuno plebis agit. Brutus, inquit, concione convocatâ, Plebi suavit ut eum Magistratum sacrosanctum & inviolabilem esse decerneret, Lege in hoc latâ & jurejurando addito, quo hæc securitas confirmaretur ; quod placuit omnibus, lexque ab eo & collegis hæc scripta est ; Tribunum invitum nemo, ut unum è vulgo, quicquam facere cogito, nec verberato, nec alium verberare jubeto ; si quis contra fecerit, facer esto, & bona ejus Cere-ri dicata sunt. Indéque apud Romanos mos obtinuit ut Tribunorum corpora sacrosancta sint. Et quod hinc ea immunitas ad Magistratum potestatem extendatur, confirmat etiam Livius, qui de Tribunis etiam agens ; Juris interpretes, inquit, quia Ædilis à majoribus magistratibus prehendi ducique possit, dicebant Argumen-

Lavinians, had stabbed their Ambassadors; and therefore Romulus considering the real Impiety of the Fact, and the Necessity of speedy Vengeance, to prevent this Violation of the most sacred Law from escaping unpunish'd, he seized the Malefactors and deliver'd them bound to the Lavinian Ambassadors to carry them off.

The same Author shews that sacred Persons ought to be exempt not only from the Injuries of private Men, but likewise from the Jurisdiction of Magistrates, where speaking of the Tribune of the People, Brutus, he says, having call'd an Assembly, perswaded the Commons to declare that Magistrate sacred and inviolable, by proposing a Law with an additional Oath to strengthen his Security, which they all agreed to, and a bill was drawn up by him and his Collegues in this Form. 'Let none presume to oblige a 'Tribune as a common Person to do any thing 'against his will, let no Man beat him, or cause 'him to be beaten. If any Acts contrary let him 'be accursed, and his Estate consecrated to Ceres. From that time the Persons of the Tribunes were always respected by the Romans as inviolable. Livy likewise proves, that their immunity extended to the Power of Magistrates; for speaking of the Tribunes, he says, that because the Ædiles were Subject to the Power of their Superiors, the Lawyers concluded the Ædiles were not sacred. Posthumius
in

to fuisse pro sacrosancto ædilem non haberi: & apertius apud eundem Posthumius, cum ad consules de Populo Romano, ab obligatione Sponsionis cum Samnitibus factæ, liberando verba faceret; interea dedite, inquit, nos prophanos, quos salvâ religione potestis; dedetis deinde & istos sacrosanctos (Tribunos plebis innuens) quum primum magistratu abierint. Ejusmodi verborum formula, prout testatur Albericus Gentilis, de legatis usurpabatur; Legatus neque cæditur, neque violatur, vel, uti Author Quæstionis, Legatus neque verberibus neque contumeliis afficitur.

Secundò, pro immunitate Legati ratio habebatur, quod Legati admissi fide publicâ muniantur. Duo sunt, inquit Grotius, quæ ad Jus Gentium passim referri videntur, Prius ut admittantur, deinde nè violentur. Et admissa legatio apud hostes, tanto magis apud amicos, præsidium habet Juris Gentium, quasi ab eo tempore tacita pactio intercesserit. Et Johannes Felden (qui Grotio minimè adulatur) in annotatis, præcipua, inquit in Legatione est admissio, inde enim alterum, quod inviolabiles sunt, dependet. Nam admissio quasi contractus est quo Legati suam salutem credunt ei ad quem missi sunt;

in Livy speaks still plainer. For in his Speech to the Consuls, about releasing the Romans from the dishonorable Treaty made with the Samnites; deliver us up, first, says he, who are common Persons, into the Hands of our Enemies, as you may safely do with a good Conscience; and let those sacred Tribunes be surrender'd afterwards, as soon as they have laid down their Office. Albericus Gentilis says a Form of this Nature was used with Respect to Ambassadors. An Ambassador is neither scourged nor abused; or, as the Author of the *Quæstio vetus* &c. An Ambassador is neither punish'd with Stripes or contumely.

Secondly, The Second Argument for the immunity of an Ambassador, is his being receiv'd into the publick Protection. Ambassadors, says Grotius, have a right to two things by the Law of Nations; one, to be admitted; the other to be secure from Violence. And when the Ambassy is admitted, 'tis protected by the Law of Nations among Enemies, and much more among Friends, as if from that time there was a secret Agreement between them. Felden, who is by no means partial to Grotius, observes, the Admittance is the principal thing in an Ambassy, and that the other Right of being inviolable depends upon it. For Admittance is a sort of Contract, whereby

34 *De Legati delinquentis, &c.*

sunt ; alter vero Securitatem pollicetur, si-
ve expressè, siue tacitè, unde querelæ ju-
stæ oriuntur, si Securitas non præstetur ;
Fides vero publica, quæ expressè vel taci-
tè ab eo, qui admittit Legatum, interpo-
nitur, respondet Literis Credentiæ, quæ
ab eo, qui Legatum mittit, deferuntur.
De quibus Fredericus Marsellaer, Literæ
Credentiæ, inquit, sunt Legationis tessera,
quâ Princeps fidem Legato tribuit, ut quæ
egerit, admiseritve commodo vel periculo
suo præstitisse videatur. Aliis admitti &
audiri Legatum suum Princeps petit ; aliis
etiam eum laudat & commendat. Com-
mendationem quis obligationem dixerit ;
itaque traduntur literæ, non solum ut cre-
datur ei, qui mittitur ; sed & præterea ut
obligetur is qui misit, immo, & qui ad-
mittit. Sanè, qui mittit, fidem suam ob-
stringit ratum apud se fore quicquid Le-
gatus egerit ; qui admittit, datâ fide cogi-
tur Jus Legationis semper salvum præsta-
re ; & ei videndum est, ne datâ fide pub-
licâ Legato quicquam molestiæ oriatur, in
accessu aut abscessu.

Quanti momenti sit hæc fides publica
ex eo æstimari possit.

Primò, Quod *Joshua* & Principes Israëli-
tici, qui Gabionitis se è longinqua regione
venire fingentibus fidem dederant se iis-
dem

whereby Ambassadors commit themselves to him they are sent to; and he promises to protect them; on which account there is good Reason to complain, if they miss of Security. Now that publick Security which is given, either tacitly or expressly, by him that receives the Ambassador, corresponds to the Credentials of the Principal. These Credentials, says Fred. Marsellaer, are the Pledge of the Ambassy, wherein the Principal promises to take upon himself all the good or ill Consequences of his Ministers Transactions, he desires his Ambassador may have Audience from others, and recommends him to them. This recommendation may be look'd upon as an Obligation, and therefore Credentials are deliver'd not only upon the Ambassadors Account, but that his Principal, and the Prince to whom he is sent, may be both obliged by them. For as for the Principal, he obliges himself to ratify all the Treaties of his Ambassador: And the Prince that receives the Ambassy is bound in honour to secure to him the rights of Ambassages, and to take care that no disturbance be given to the Ambassador, neither coming nor going.

The great Importance of the publick Credit, may be learnt from the following Instances.

First, Joshua and the Princes of Israel, who had promised to spare the Gibeonites upon their pretence of having come from a far Country,

36 *De Legati delinquentis, &c.*

dem parcituros ; cùm intelligerent se deceptos, fidem tamen observârunt. De quo *Ambrosius, Josua*, inquit, pacem, quam dederat, non revocandam censuit, quia firmata erat Sacramenti Religione ; ne, dum alienam fidem argueret, fidem suam tolleretur.

Secundò, Quod Superior Africanus cum navem multis illustribus Carthaginiensibus onustam, in suâ potestate haberet, inviolatam dimisit, quia se Legatos ad eum missos dicebant, tametsi manifestum esset, illos præsentis periculi vitandi causâ falsum Legationis nomen amplexos esse ; ut Romani Imperatoris (inquit Valerius Maximus) potius decepta fides quam frustrâ implorata judicaretur.

Tertiò, Quod ingenti Pænorum classe circa Siciliam devictâ, cum Duces fractis Animis consilia petendæ pacis agitarent, & Amilcar ad Consules ire non auderet, ne eodem modo catenæ sibi injicerentur, quo ab ipsis Cornelio Asinæ consuli injectæ fuissent ; Hanno autem certior Romani Animi æstimator, nihil tale timendum ratus, ad colloquia eorum pergeret, apud quos, cùm de Belli fine ageret, & Tribunus Militum ei dixisset, posse meritò illi evenire, quod Cornelio accidisset, uterque Consul, tribuno tacere jussu, isto, inquit,

Country, still kept their promise after they found themselves deceived. On which St. Ambrose observes, that Joshua would not recal the Peace he had granted, because it was confirm'd by the Obligation of an Oath, and that he might not destroy his own Credit, while he reproached others with the breach of it.

Secondly, The elder Africanus having taking a Ship with many of the Noble Carthaginians let it go again without any damage, because they affirm'd, they were sent on an Ambassy to him; altho' it was plain, they falsly assumed that Title to deliver themselves from their present Danger. But this he did, choosing rather to have the Faith of the Roman General thought to be imposed on, than to be implor'd in vain.

Thirldy, When a large Carthaginian Fleet had been destroy'd near Sicily, the Admirals in despair were projecting the best Measures of suing for Peace; Annilcar, who was one of them, dare not go to the Consuls, lest they should bin'd him in Chains, as Cornelius Asina the Roman Consul had been bound by them. But Hanno, being better acquainted with the Roman Generosity, and thinking there was reason for no such fear, undertook to parley with them. As he was treating about concluding the War, a Military Tribune told him, he justly deserved the Fate of Cornelius: But

quiunt, metu, Hanno, te fides nostræ civitatis liberat.

Quartò, Quod *Jugurtha*, qui fide publicâ Romam venerat, postquam Massivæ cædis Author fuisset, & tanti sceleris manifestus, non prius omiserit contra verum niti, quam animadvertit supra gratiam atque pecuniam invidiam facti esse, paucis postea diebus in Numidiam profectus est, jussus tantum à Senatu Italiâ discedere.

Tertiò, Pro ratione affertur, quod Legatus personam ejus, à quo missus est, qui neminem superiorem agnoscit, repræsentet. Jus Legationis, inquit *Grotius*, ad eos Legatos pertinet, quos mittunt qui summi imperii compotes sunt; & Legati fictione quâdam habentur pro personis mittentium; unde *Livius*, in Legato, inquit, est Majestas publica. Et *Cicero* de *Popilio*, qui *Antiochum* virgulâ circumscripsit, præclarè, inquit, ab eo factum; Senatûs enim faciem secum attulerat, auctoritatem reipublicæ. Et proinde si Legatus pro Majestate & Amplitudine ejus, qui eum misit, minùs honorificè fecerit, reus habetur diminuti imperii. Et si quid contra ejus dignitatem patiatur injuria ad ipsum pertinere censetur. Ad primum
quod

both the Consuls commanding him to be silent, Hanno, say they, the Honour of our City frees you from this fear.

Fourthly, Jugurtha being come to Rome under the publick Protection, and there having caused the Murther of Massiva, and being known to be guilty of the Fact, never ceased his endeavours to stifle the Truth, till he found the Odium of the Crime was greater than his Interest and his Purse; and a few Days after he return'd to Numidia, being only commanded by the Senate to leave their Dominions.

Thirdly, The Third Argument for the immunity of an Ambassador is the representing his Principal, who acknowledges no Superior. The Right of Ambassage, says Grotius, belongs to such Ambassadors as are sent by Sovereign Power; and by a kind of Fiction, they are imagined to be the Persons of their Principals; for which reason, Livy says the Majesty of the State is lodged in the Ambassador. And Cicero speaking of Popilius, says it was an excellent Action, for he had brought with him the Appearance of a Senate, and the Authority of a State. If therefore an Ambassador behaves himself unsuitably to the Majesty and Grandeur of his Principal, he is charged with impairing the Dignity of the State. And if he be unworthily treated, the disgrace reflects on his Prince. So, in regard to the first Case, Arfaces, the

quod attinet, Arsaces Rex Parthorum, Orabazum, quem Syllæ legaverat, quod in Colloquio locum honoratiorem ei cesserat, ultimo supplicio affecit. Ad posterius referri potest, quod dixit Cicero, Legati quod erant appellati superbius, Corinthum, Græciæ lumen, Patres nostri extinctam esse voluerunt. De utroq; in historiis exempla quam plurima occurrunt. *Felden* in notatis ad *Grotium*, constat, inquit, si Legati quid deliquerint, eos puniri non posse; quia eorum personis accidit repræsentare aliquem, in quem nullum jus habemus: quare rectè tradit Author remittendum esse Legatum ei, qui misit ut is aut puniat eum, aut dedat. Et Gentilis; in personâ, inquit, quâ Principem refert, ipse Princeps subditur, si ea subdatur. Et *Be-soldus* plenius, in contemptum, inquit, Domini vergit, si Legatus, qui personam ejus repræsentat, alibi puniatur. Quod & civile, inquit, est; nec ratione caret. Legatus enim non est planè, ut alius; duplexq; jus habet, ex propriâ & ex Domini sui personâ; nec per suum scelus Domini & Patriæ suæ privilegium amittit.

Quartò, Quod Legatus exemptus sit è jurisdictione territorii in quo legationem obit: *Grotius* sicut fictione quâdam, inquit, Legati habentur pro personis mittentium,

Parthian King, slew Orobazus his Ambassador to Sylla, for giving him the upper Hand at his Audience. Cicero has related an Example of the Second Case. Our Ancestors, says he, by destroying Corinth put out one of the Eyes of Greece, for speaking disrespectfully to the Ambassadors, multitudes of Instances in both Cases may be found in History. Felden in his Notes on Grotius, says it is a thing agreed upon, that Criminal Ambassadors must not be punished, because they represent a Person over whom we have no Power. Wherefore our Author has reason to say, the Ambassador must be remitted to his Principal, to punish him or deliver him up. Gentilis affirms, that the Prince himself is subjected by the Subjection of his Representative. Besoldus is more Express. The Punishments of an Ambassador reflects disgrace on the Principal. The Civil Law is founded on Reason. An Ambassador differs from other Men, and has a double Right from himself and his Master; nor does he forfeit the Privilege of his Prince and his Country by any Misdemeanor of his own.

Fourthly, An Ambassador is exempt from the Jurisdiction of the Country where he resides. Grotius says, that as Ambassadors by a kind of Fiction are taken for the very Persons of their

42 *De Legati delinquentis, &c.*

centium, ita simili fictione constituentur extra territorium, in quo versantur: unde civili jure populi, apud quem vivant, non tenentur. Magistratibus in Domum Legati jus non fuisse & multis colligi potest. Cum Achæi Lacedæmonios, qui ad diversa Legatorum Romanorum confugerant, vi extrahere tentassent, nullâ loci Sacri Religione tacti, apud Senatum delati sunt, uti scribit Pausanias, quasi jus Gentium eâ impudentiâ violassent. Et sæpius apud Livium occurrit, Romanos Aedes, loca libera, Legatis concessisse; & quamvis alii loca libera vacua interpretantur, Gentilis Libertatem ad jus refert. Author etiam Quæstionis, non solum corpora Legatorum, inquit, sed & hospitia eorum sacrosancta habentur, nec immerito, cum domus cuique tutissimum sit refugium & receptaculum. Itaque hic honos domui Legati debetur, ut non nisi reverenter, & veniâ petitâ & impetratâ introeatur, quasi in sacrarium. *Grotius* ait, Quod Legati quia extra territorium, in quo versantur, habentur, ideo civili jure populi apud quem vivunt, non tenentur. Legibus civilibus eos non teneri, alii consentiunt. Ex uno jure Gentium, inquit Gentilis, Legati judicantur, si ipsi judicandi sunt. Et *Besoldus*, cum Legatus non

Principals, so by a like Supposition, they may be imagin'd as out of the Country where they reside; and for this Reason, they are not subject to the Laws of that State. There are many precedents to show, that Magistrates have no Power over an Ambassadors House. When the Achaians endeavour'd to force some Lacedæmonians from the Lodgings of the Roman Ambassadors, whither they had fled for Sanctuary, without any regard to the privilege of the Place, they were accused to the Senate, as Pausanias reports, for having shamefully violated the Law of Nations: Livy frequently observes, that the Romans assign'd Habitations for the Ambassadors, which he calls free Places. Some indeed, by free understand only Places where there was room. But Gentilis refers it to priviledged Places. The Author of the *quæstio vetus*, &c. says that the Lodgings of Ambassadors as well as their Persons are accounted Sacred, and that for very good Reason, since Home affords the best Shelter and Retreat for every Man. This Honour therefore is due to his House, never to enter it irreverently, nor without leave. Grotius says Ambassadors are exempt from the Laws of the Land where they reside, because they are supposed not to be in that Country. Others are of the same Opinion. Ambassadors, says Gentilis, are judged only by the Law of Nations. Be-
foldus

44 *De Legati delinquentis, &c.*

non nisi Gentium juri sit subjectus, sequitur, inquit, eum statutis & legibus civilibus non teneri ; rectè, quòd jus civile definitum sit, quòd quisque Populus ipse sibi constituit, ut ad alios præterquam subditos non extendatur. Peregrini certò privati, postquam aliquamdiu in regione aliquâ manserint, ejus legibus tenentur ; quia ab ejusdem loci legibus proteguntur. Legati verò, cùm Juris Gentium præsidio muniantur, non est necesse ut legibus civilibus quicquam debeant, & proinde nec iis obedientiam præstare obstringuntur. Quòd si legibus & moribus loci Legatus non teneatur, quâ ratione Magistratibus & Judiciis civilibus ejusdem loci subjicietur. Regula de unoquoque puniendo in loco, ubi deliquit, in eodem regno, in Clericis aliquando & Militibus non observatur, nec in externo regno obtinet, cùm Exercitus Principis in territorio alterius Principis agit. Nam in quocunque loco est Exercitus, ibi, uti tradit Baldus, fingitur esse territorium Ducis : Et Hotomannus addit, quòd Capitanei de criminibus in eorum navibus commissis supra mare, extra ditionem sui Principis cognoscendi & judicandi Potestatem habent. Nec desunt exempla Legatorum Principum potentiorum, qui in exteris terri-

foldus says, the Exemption of an Ambassador from the Civil Law, is a consequence of his being subject only to the Law of Nations. For the Civil Law, is that Law which any State has enacted for its self, and consequently extends only to the Subjects of that State. Private Foreigners indeed, by dwelling some time in a Country, become Subject to its Laws, because they are protected by those Laws; but Ambassadors, being secured by the Law of Nations, want no Benefit from them, and cannot be subject to them. Now if an Ambassador be under no Obligation to the Laws and Customs of the Place, how can he be subject to the Magistrates and Courts of Judicature in that Place? The Rule of punishing, where a Fact is committed, is sometimes neglected in Clergy-men and Soldiers, within the Dominion; nor does it take Place out of the Kingdom, when the Army of one Prince is in the Country of another. For, as Baldus affirms, the Dominion of the General is supposed to be wherever the Army is; and Hotoman adds, that Sea-Captains have Power to try and judge of Crimes committed in their Ships, on those parts of the Sea which are beyond the Dominions of their Prince. There are instances to be found of the Ambassadors of the more powerful Sovereigns, who in the Places of their Residence have exercised their Authority, and the power of the Sword over
their

46 *De Legati delinquentis, &c.*

territoriis, ubi Legationes obierunt, in suos domesticos imperium & jus gladii exercuerunt. Ita refert idem Hotomannus, Legatum Regis Galliarum in regione vicinâ, servi domestici, qui filiam ipsius undecim annorum per vim stupraverat, propriâ auctoritate gulam laqueo fregisse: Et Legatum Regis Hispaniarum Venetiis famulum, qui grande aliquod facinus perpetraverat, Senatu minimè consulto, è fenestris hospitii sui suspendi fecisse, quæ proculdubio ausi non fuissent, nisi se jurisdictione territorii, ubi morabantur, exemptos censuissent.

C A P U T III.

De Rationibus contra Legati Immunitatem.

Nonnulli Eruditione & Jurisprudentiâ conspicui, contra id quod censet Grotius, statuunt. Quòd Legatus in loco, ubi legationem obit & conveniri & muniari possit. Quorum Opinio hujusmodi rationibus niti & confirmari videtur.

Primò, Quòd Sanctitas Personæ Legati ejus sceleribus non patrocinetur.

their Domesticks. Hotoman gives a relation of a French Ambassador in a Neighbouring Nation, who hang'd one of his Servants for ravishing his Daughter Eleven Years Old; and of a Spanish Ambassador at Venice, who without consulting the Senate, hung his Footman out at the Window for the commission of some Capital Crime. This, they would never have presumed to do, had they not thought themselves free from the jurisdiction of the Country where they resided.

C H A P. III.

Arguments against the Immunity of Ambassadors.

Several eminent Lawyers, contrary to the Opinion of Grotius, declare it lawful to try and punish an Ambassador where he resides, and think they prove their Opinion by the following Reasons.

First, the sanctity of the Character is no defence for the Ambassadors Crimes.

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48 *De Legati delinquentis, &c.*

Secundò, quòd publica fides fraudulentos & perfidos non protegat.

Tertiò, Quòd persona Principis, quam Legatus sustinet, ipsum supplicio non eximat.

Quartò, Quòd præsidium juris Gentium Legatis Ordinariis non debetur, & quòd necessarium sit ut Legatus, ubi deliquit, puniatur.

Primò, Quòd Sanctitas Personæ Legati sceleribus ejus non patrocinetur, facit primò, quòd Paschalius affert ex Plutarcho, scilicet Tribunus plebis sacer est & inviolabilis; quia à populo consecratus est, eique præest. Quòd si immutatus insurgat in populum, eique adimat suffragia, se ipse Magistratu abdicat, cùm nihil earum rerum præstet, quarum intuitu, eâ potestate donatus est.

Secundò, Quòd Theodatus, Gothorum Rex, ad Legatos Justiniani dixerit, sanctum esse apud homines Legatorum nomen plenumque honoris: Sed hoc jus Legati sibi servant, quamdiu suâ modestiâ Legationis dignitatem tuentur. Ita enim existimant homines fas esse Legatum interficere, si is in Principem, ad quem mittitur, sit injuriosus; aut alienum matrimonium violet.

Ter-

Secondly, Publick Faith is no Protection to the fraudulent and perfidious.

Thirdly, The Ambassador is not exempt from punishment, by representing his Principal.

Fourthly, Ambassadors in Ordinary cannot claim the Security of the Law of Nations, but 'tis necessary to punish him where the Fault is committed.

First, The Sanctity, &c. One Argument for this is the Citation of Paschalius from Plutarch, that a Tribune of the People is sacred and inviolable, because he is consecrated by the People, and appointed over them. But if he turns against the People, and takes away their Liberties; he abdicates his Office by performing none of those things, for the sake of which, he was vested with that Authority.

Secondly, A second Argument for the first Assertion, is the Speech of Theodatus King of the Goths to the Ambassadors of Justinian. The title of Ambassadors is sacred and very honourable; but they have Right to this no longer than they preserve the honour of their Office by their good behavior. For 'tis a common Opinion, that an Ambassador may be kill'd for violating the Prince he is sent to, or for committing Adultery.

F

Thirdly

Tertiò, Quòd Author Quæstionis dicit, quemadmodum ipsi Principi, qui aditur, sancta debet esse persona Legati, ita è contra ipsi Legato sancta debet esse persona Principis, ejúsque imperium; ne aliàs Jus unius fiat injuria alterius. Nam, cùm Jus Gentium Naturâ matre & Necessitate magistrâ ortum sit, necesse est ut naturalis ejus æquitas utrinque recurat; atque hinc, Legatorum Securitati; inde, Principis, ad quem mittitur Legatio, indemnitati vicissim consulatur.

Secundò, quia publica fides fraudulentos & perfidos non protegat: Cùm, quod ait Besoldus, sub fide publicâ Princeps, ad quem mittitur Legatus, decipi non debet. Et Beethius de securitate & salvo conductu Legati inquit, privilegiatâ securitate fruuntur, dum ipsi fidem publicam, sub quâ admittuntur, non frangunt; ob quod vicissim ipsis frangi potest, præsertim si quid contra Principis aut Reipublicæ statum moliantur. Et Marsellaer, is, inquit, alterum ab obligatione liberat, qui conditionem, quam pacta includunt, fallendo transgreditur. Nam quo ore, inquit Author quæstionis, ad Juris Gentium præsidium confugit, in quod committere non dubitavit, cùm frustrâ legis auxilium implorat, qui in eum committit. Nec debet

Thirdly, The Author of the Question brings a Third Reason. As, says he, the Ambassador's Person ought to be sacred with the Prince he is sent to, so again the Person of the Prince and his Government ought to be sacred with the Ambassador; lest otherwise the right of one shou'd turn to the wrong of the other. For since the Law of Nations is the Product of Nature improved by Necessity, its natural Equity must be reciprocal, by which the Protection of Ambassadors on one hand, and the Safety of Princes on the other are mutually consulted.

Secondly, The Second Argument is, that Publick Faith is no Protection to the fraudulent and perfidious: Since, according to Besoldus, the Prince who receives an Ambassador upon the publick Faith ought not to be tricked. Beethius, speaking of the Security and safe Conduct of an Ambassador, says, they ought to enjoy the Benefit of Protection so long as they violate not that publick Faith whereon they were received; but if they be guilty of such a Breach, the Publick Faith may be broke with them; especially if they plot against the Prince or the State. Marsellaer says, he that fraudulently breaks a Covenant frees the other Party from his Obligation. For, says the Author of the Question, with what face can he claim the Protection of the Law of Nations, who has not scrupled to violate that Law himself?

52 *De Legati delinquentis, &c.*

debet ex eo munere patrociniū captare quòd ipse per scelus propriū despexit. Secundò, quòd idem alibi, si Legatus publicam administrationem turpissimā negotiatione commutet; si ferales fasces imperio, ad quod mittitur, inferat; seditiōnem tumultūve concitet; Oppidorum deditionem, subditorum defectionem, clandestinis coitionibus procuret; aut nefarium ejusmodi propositum ope, consilio promoveat; si principis ministris insidietur, ut è corruptis & seductis arcana expiscetur, hostis & proditor existimandus est, & ferro flammisque absumendus. Deinde, cū Legatus vix unquam conceptum animo scelus exequatur, nisi ministerio alicujus perfidi subditi adjutus; nec ille ambigitur Legis Juliæ majestatis reus esse, contagio reatus in ipsum quoque Legatum diffunditur, ut, quos par facinus coinquinat & æquat, eos par pœna constringat. Quemadmodum extraneus, si hominem gladio sive veneno occidat, nullo vinculo sibi conjunctum, Legis Corneliæ de Sicariis tantū reus est. At si filio persuaserit ut patrem occideret, vel venenum eidem filio subministraverit, his casibus non lege de Sicariis tenetur, sed eādē lege, quā ipse filius, nempe Pompeiā de Parricidis. Ita enim cū quæsitum

The Proper Judge, &c. 53

self? considering too that the Transgressor of a Civil Law, pleads the Protection of the Law in vain, nor ought a Man to pretend to any Benefit from that Character, which he, by his Villany, has contemned. Again, according to the same Author, if an Ambassador perverts his Ministry to the vilest Negotiations; if he kindles deadly Feuds in a Nation; if he raises Seditions or Tumults; if he procures the Surrender of Towns, or the Revolt of Subjects by secret Meetings; if he aids or advises any such impious Design; if he ensnares the Prince's Ministers, and bribes and seduces them to betray their Secrets; in all these Cases he ought to be reckon'd an Enemy and a Traitor, and be destroy'd with Fire and Sword. Further, since an Ambassador scarce ever executes his wicked Purposes without the Help of some traiterous Subject, who, being doubtless guilty of Treason by the Julian Law, involves the Ambassador in the same Guilt, so that they who are Fellow-criminals ought likewise to be Fellow-sufferers. As a Stranger, that stabs or poisons a Man no way related to him, is only guilty of the Cornelian Law de Sicariis; but if he perswades a Son to kill his Father, or furnishes him with Poison for that purpose, he is in both these Cases to be try'd not by the former Law, but by that of Pompey de Parricidis, as well as the Son who committed the

54 *De Legati delinquentis, &c.*

tum esset utrùm qui patrem occiderint, an etiam conscii pœnâ parricidii afficiendi essent: Metianus respondit, non solum parricidas sed etiam conscios eâdem pœnâ afficiendos esse.

Tertiò, Quòd Persona Principis, quam Legatus sustinet, ipsum judicio non eximat; facit primò, quòd Author quæstionis affirmat Legatum, ut personam Principis sustinet, nihil agere, nisi ex mandato Principis; ac proinde cùm sine mandato deliquerit, non ut Legatus, sed ut Privatus deliquisse intelligitur, atque adeo ut privatus punitur. Secundò, quòd Legatus aliquando pœnam patitur ex delicto Principis; & proinde eidem in delicto suo non debet patrocinari persona Principis. Moribus recepta est, inquit Author quæstionis, Lex talionis, scilicet in personâ Legati, à cujus Principe noster prius detentus aliâve injuriâ affectus est, quasi paria delicta mutuâ compensatione deleantur. Ita Xenophon, Quis, inquit, ad illos audeat cum caduceatore venire, quorum caduceatores occidunt? Et Belizarius Legatos Gothorum detinuit donec Gothus dmitteret Legatos Justiniani. Quòd si injuriam nobis illatam, in Legato nostro à Principe externo, in personâ ejus Legati innocentis, quem ad nos mit-

tit,

Parricide. For Metianus being consulted whether Parricides and their Accomplices shou'd be punished according to the Penalty provided in that Case, answer'd that they were both to suffer the same Punishment.

*The third Thing is thus proved. The Author of the Question asserts that an Ambassador does nothing, as the Representative of his Principal, without Commission; and consequently if he does amiss without Orders, he is taken for a private Offender, and not for an Ambassador, and punished as such. Again, an Ambassador suffers for the Fault of his Principal, and therefore the Character of his Prince ought not to defend him in his own Faults. The Law of Retaliation is generally practis'd in the Case of an Ambassador, when his Principal has confined or otherwise injured ours, as if the equal Wrongs were blotted out by this mutual Satisfaction. So Xenophon asks who dare go with an Ambassador to those, whose Ambassadors he hath kill'd already? Belisarius confin'd the Gothic Ambassadors till those of Justinian were set at Liberty. Now if an innocent Ambassador at our Court may be punished for an Injury done by a foreign Prince to our Ambassador, how comes it to pass that a Criminal Ambassador can escape Punishment by bearing the Character of his Principal? Since Justice requires that the Penalty shou'd go
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56 *De Legati delinquentis, &c.*

tit, ulcisci licet, quâ ratione legatus ipse delinquens ex personâ quam sustinet sui principis poenæ potest se subducere ? cum justum sit ibi esse poenam, ubi est noxa ; & peccata suos tenere authores. Tertiò, quod est Hotomanni argumentum. Cum nemo plus juris in alium transferre potest, quam ipse habeat, & Princeps extra territorium suum privatus sit, (ita enim Præses Provinciæ si provinciam exceßerit privatus est, inquit Paulus, & Præfectus urbis, cum urbis terminos exierit, uti ait Ulpianus, nullam potestatem habet) quomodo legatus Principis in alieno territorio personam Majestatis arrogare potest ? imò, cum ipse Princeps, si in alterius territorio ipsi principi perniciem machinetur, judicio & poenæ subjici potest ; multò magis talis principis legatus, si idem fecerit in eodem territorio debitâ poenâ plecti potest. Huic congruit, quod Arnisaus Mariani Scotorum Reginam, quod contra Elizabetham Reginam Angliæ conjuraverit, justè in Angliâ morte multatam asserit ; à Majestate Principis personam ejus distinguens, quandoquidem illa regni & subditorum terminos non excedit ; hæc ubi alienam rempublicam est ingressa, si in illam peccaverit, ab alienâ quoque Majestate coerceri potest. Addit,
quòd

along with the guilt, and Offenders be obliged to answer for their Crimes. Again by Hottoman's Argument, since none can give another more power than he has himself, and since a Prince out of his own Dominions is but a private Person (for Paulus tells us, the President of a Province, when cut of it, is no more: And the Mayor of a City, according to Ulpian, has no power when he has passed his bounds) how can the Prince's Ambassador pretend to a Sovereign Character in a foreign Country. If the Prince himself in the Dominions of another may be try'd and punished for plotting the Destruction of the Sovereign, much more may that Prince's Ambassador in the same Country be brought to condign Punishment for the same Fact. Agreeably to this, Arniseus asserts, that Mary Queen of Scots was justly put to Death in England for plotting against Qu. Elizabeth. Here he distinguishes between the Majesty and the Person of the Prince, since the former can never go beyond the Bounds of the Kingdom, and the latter, when it is in a foreign Nation, may be punished by the Majesty of that place for transgressing against it. Besides, says he, Princes and States would be in a bad Condition, if a foreign Prince were allow'd to contrive their Destruction: But why may not a conspiring Prince be personally punished in a foreign Country, since for doing the same

quòd mali cum principibus & rebus publicis ageretur, si principi extraneo in eorum perniciem conjurandi licentia permetteretur. Et quidni, inquit, ubi conjuravit, de ejus corpore Supplicium sumere liceat, in quem, siquid tale in suo regno contra eorum statum commisset, in ejus fines exercitum ducere & eundem bello, quod est nihil aliud quam commune supplicium, prosequi fas esset.

Quartò, Quod Præsidium Juris Gentium Legatis Ordinariis non debetur, & quòd necessarium sit, ut, Legatus, ubi deliquit, puniatur; ad Legatos Ordinarios quod attinet, Author quæstionis, eorum usus, inquit, veteribus penitus fuit incognitus. Eos pro exploratoribus habet Kirchnerus. Paschalius oratione satis prolixâ in eos invehitur, nihil est, inquit, tam clausum, quod isti legati non recludunt; nihil tam abditum, quod non perumpant; nihil tam invium, quod non sit ipsis perviam. Habent suos inspectores, qui omnia resciant, omnes rumoribus ventos colligunt: Advertunt quid uspiam ægrum, quæ pars imperii labascatur, quæ, quamvis firma, quati potest, quantum habeas opulentia, domi quam præstes prudentiam, militia quam virtutem. Proinde cognitum habent, timendus sis, an contemnendus

same thing in his own Kingdom, an Army might justly be carry'd into his Country to make War against him, which is a Punishment different from the former only in that it extends to others.

Fourthly, The fourth Proposition was that the Security of the Law of Nations is not due to Ambassadors in Ordinary, and that the Ambassador ought to be punished where he has committed the Fault. As to Ambassadors in Ordinary, the Author of the Question tells us, the Ancients knew nothing of their use. Kirchner accounts them Spies. Paschalius has a tedious barangue full of invectives against them. There is, says he, nothing so close, which these Ambassadors do not open; nothing so private, which they do not break open; nothing so inaccessible, which they do not make way to: They have their Spies to hear every thing, and collect the Winds of rumors; they observe whatever is amiss, what part of the State is weakest, where its Strength may be shaken, what Power, what Counsel at Home, what Valour in the Field. And therefore they know whether you are to be feared or despised.

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temnendus. Prisci moris fuit, ut refert Procopius, specie honoris sic observare legatos, ut nè frigidam quidem gustarent sine interventu eorum, qui custodes iis appositi erant. C. Æquilius, Authore Plutarcho, in Senatum Romanum prodiens Magistratus increpavit, quod tam diu sine ullo effectu Græcorum Philosophorum legatio in urbe maneret. Et Gentilis refert Henricum Septimum Angliæ Regem prudentissimum nunquam passum Ordinarios Legatos in regno suo morari. Deinde quòd necessarium sit & expediat, ut Legatus, ubi deliquit, puniatur, facit, primò quod Author quæstionis, Apprimè, inquit Fabius in hanc Sententiam. An Existimas hanc legatis dari licentiam ut quæcunque scelera in suo officio commiserint cum omnibus hac una lege decidant! Omnium invidenda legatorum conditio, si legato Crimina & leges remittat. Secundò, quod prout idem Author quæstionis censet si privilegia legatorum eo usq; producere liceat, ipsa legationis libertas tolletur. Nam, cum dolum non faciat, qui dolum excludit, impunè licebit finibus nostris legatos arcere, & penitus non admittere, cum ab injuriis eorum aliter cavere nequeamus; & sic dum jus Gentium tuemur, jus Gentium violabimus.

Tertiò,

It was, says Procopius, the Antient Custom to watch Ambassadors, under the appearance of Honour, so narrowly, that they could not drink without the knowledge of the Guards appointed to attend them. Plutarch relates, that C. Æquilius came to the Senate and reproached the Magistrates, for suffering the Embassy of the Grecians to continue so long in the City to no purpose. Gentilis reports, that Henry VII. (King of England) a very Politick, would never permit any Ambassador in Ordinary to reside in his Kingdom: As to the Necessity and Expedience of punishing an Ambassador where he has been Guilty, one thing that makes for it, is a Citation quoted out of Fabius, by the Author of the Question. Do you think, says he, Ambassadors are licensed to commit any Crimes whatever, without giving any farther Account? O envy'd happiness of Ambassadors, if their Condition exempts them from Guilt and Law. Again, as the same Author thinks, if the privileges of Ambassadors may be extended so far, the liberty of Ambassies will be destroyed. For since 'tis no Fraud to prevent a Fraud, we may forbid and entirely refuse Admittance to Ambassadors, when otherwise, there can be no provision against their Attempts, and by this means, we shall violate the Law of Nations by endeavouring to preserve it. Again; if, says the same Author, an Ambassador is remitted

Tertiò, inquit, idem Author, si Legatus puniendus remittatur, & Princeps, cujus est legatio, negligat ultionem, nonne hinc geminabitur injuria, dum Legati sceleri accedat contemptus principis in eo non vindicando? cujusmodi injuria non nisi publicâ clade expianda est. Et dicere publicam injuriam armis & collatis signis vindicandam ratio non est, cum longè satius & consultius sit publica mala unius facinorosi pœnâ, quam publicis claudibus & infontium sanguine expiari.

C A P U T IV.

De Responsionibus ad rationes contra Legati immunitatem.

PRO primâ ratione, scilicet, quod sanctitas ejus personæ sceleribus non patrocinetur, primò quod ex fragmento Plutarchi de Tribuno plebis affertur, re tota inspecta parvi momenti videbitur. Sic enim res habuit. Tiberius Gracchus, Tribunus Plebis, Octavium Collegam, quod ipsi in perferendâ lege Agrariâ restitisset Suffragiis populi, tribunatu exuere conatus est. Quod cùm sufficienti suffragiorum

to Punishment, and his Principal neglects to inflict it, will not the injury be doubled, by the Accession of the Princes contempt to the Crime of the Ambassador? And such an Injury as this, can be redress'd only by the publick Calamity: Nor is it sufficient to say, that this publick Injury may be punished by open War, since it is far better and more adviseable to satisfy a publick Wrong, by punishing one single Malefactor, then by general Slaughters and shedding the Blood of the Innocent.

CHAP. IV.

Answers to the foregoing Arguments.

AS to the first Reason, that the sanctity of an Ambassador is no defence for his Crimes, the Citation from a fragment of Plutarch about a Tribune of the People, will appear of no Weight upon a review of that Business, which was exactly thus. Tib. Gracchus one of the Tribunes, endeavour'd to throw his Collegue Octavius out of that Office by the Votes of the People, for opposing the passing of the Agrarian Law; but when he found he

64 *De Legati delinquentis, &c.*

rum numero efficere non potuerit, per libertos eum de rostris contumeliosè detrahi & deturbari imperavit. Hoc cùm animadverteret, non solùm Principibus, sed etiam plebi otiosum fuisse (siquidem eximia, inquit Plutarchus, & præclara tribunorum plebis dignitas, quæ fuerat usque in eum diem intacta, oppressa & conculcata videbatur.) Orationem habuit ad populum, quâ fassus est, sacrosanctum tribunum esse, quod consecratus à populo est, & populi curam gerat. At, inquit, si populum lædat, & potestatem ejus retundat, spolietque eum suffragiis, ipse exuit honore; & ulterius addit, Capitolia diruentem & natalia inflammantem tribunum attingere non licebit, quæ cum faciat improbus quidem est Tribunus; Populum vero si pessundat, non est jam Tribunus. Annon igitur res sit absurda, si Tribuno jusserit Consulem in carcerem ducendi, Populo potestatem Tribuno quando ea contra auctoritatem utitur, detrahere non licere? Etenim Consulem & Tribunum pari modo creat populus; & si jure Tribunatum maximæ partis suffragiis caput, quidni majori jure privetur, omnibus abrogantibus? Ex quibus id solummodo colligere licet, quod si Tribunus contra officium gravius deliquerit, ipsum

could not get Votes enough for his purpose, he order'd him to be Ignominiously dragged out and thrown down from the Sestra. But perceiving that the Commons as well as the Patricians were exceedingly offended at his proceedings, whereby the Honour of the Tribunes, which had till that Day continu'd inviolable, appeared, notwithstanding its Excellence to be oppressed and trampled on; he made a Speech to the People acknowledging that a Tribune was Sacred, and consecrated by the People to take care of their Interest. But if he injures the People, and diminishes their Power, and robs them of their Votes, he degrades himself from his Office. A Tribune, tho' he should destroy the Capitol and burn the Fleet, may not be touched; in committing such Actions he would be a wicked Tribune, but by destroying the People he continues a Tribune no longer. Is it not an Absurdity therefore, for a Tribune not to be allow'd to devest a Tribune of his Authority, when he abuses his Power, if he may lawfully imprison a Consul. For the People create the Consul, and the Tribune in the same manner. And if the Tribuneship be rightly conferr'd by a Majority of Votes, why may it not with greater Reason be abrogated by the general Consent? The consequence of which is only this; that if a Tribune be scandalously Guilty, he deserves to be degraded, but can be

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devested.

ipsum ut officium ei abrogetur promeritum esse, cum verò non nisi à populo qui constituit justè destitui posse. Quod cum revera de Octavio factum non fuisset, excusatio Tiberii Gracchi tam parum ipsi profuit, ut postea in Capitolium fugere coactus ibi à civibus trucidatus, ejusque corpus in Tiberim projectum sit. Secundo, quod à Theodato, de Legatis Justiniani pronunciatum est videtur ab iis, qui Legatum in loco delicti puniendum statuunt, pro Oraculo haberi. Quare considerandum qualis vir is fuerit, quâ Occasione dixerit, & quodnam Procopii & aliorum de eo Judicium fuerit. Amalasuntha Administratrix regni Gothorum, mortuo Alarico filio, Theodatum regii generis (de quo tamen nec Gothi, nec Itali rectè sentiebant) ad imperium evehere in se suscepit, modo promitteret, ipsâ vivente, regis nomen duntaxat ferre, sibi autem ut antea, regni administrationem permittere: Hoc Theodatus per Sancta jurans se omnino facturum profitebatur; quo juramento Amalasuntha elusa ipsum regem constituit. Theodatus, suscepto imperio, præcipuis ex Amalasunthæ propinquis interfectis, ipsam in carcerem detruxit, & à quibusdam ei infestis obtruncari passus est. Quod cum Justinianus

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devested of his Office only by the People who first placed him in it. But this not being done to Octavius, Gracchus his defence was of so little Service to him, that being forced to fly to the Capitol for Refuge, was there killed by the Citizens, and his Body was thrown into the Tiber. Secondly, The Expression of Theodatus to the Ambassadors of Justinian is look'd upon as an Oracle, by those who are for punishing Ambassadors where they are guilty. Wherefore we must consider, what sort of a Man Theodatus was; on what Occasion he spoke those Words; and see what Procopius and others thought of him. Amalasuntha, Queen Regent of the Goths, when her Son Alane was Dead, undertook to advance Theodatus, who was of the Royal Family, to the Throne, tho' he was favour'd neither by the Goths nor Italians, if he wou'd be content with the Title of King, and leave the Government to herself. This, Theodatus engag'd to do by many Oaths and Protestations, which Amalasuntha believing made him King. Theodatus having obtain'd the Kingdom, slew the chief Relations of Amalasuntha, imprison'd her, and allow'd some of her Enemies to behead her, which Justinian hearing, prepared War against him and the Goths, at which Theodatus being frighted, wrote to the Emperor to this Effect. That altho' he was of the Royal Family, he had spent
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Imperator audivisset, contra ipsum & Gothos bellum parabat. Tum Theodatus tremore percussus ad Imperatorem scribit, se, quanquam regio sanguine ortum, literis tamen solum operam dedisse, & à perturbationibus bellicis omnino abhorre-
re, nec existimare se decere pro terrestribus imperii cupiditate vitam in discrimine agere; itaque, si ipsi prædia assignarentur quæ mille & ducentos aureos quotannis præberent, Gothorum & Italorum regnum ipsi Imperatori secessurum; utpote qui longè malit Agriculturæ vacare, quam in imperatoriis curis vitam agere. Deinde rogat ut confestim aliquem delegaret, per quem, quod proposuerat, transigeretur. Itaque ab Imperatore Petrus & Athanasius ad eum missi cum potestate regnum Italiæ Imperatoris nomine recipiendi & prædia ad domum Imperialem, pertinentia in ipsum transferendi. Interea audit Theodatus Duces quosdam Imperatoris à Gothis in Dalmatiâ interfectos; unde valde elatus, nullâ jam rerum promissarum habitâ ratione, Legatos ad se venientes vili pendere, & eludere haud indignum duxit. Qua de re cum Petrus indignatione aliquâ commotus, ipsum vehementius urgeret, ut fidem Imperatori datam præstaret, ita uti objicitur allocutus est.

his Time chiefly in his Studies, and was very much averse to the disturbances of War; that he thought it unsuitable to his Character, to hazard his Life for the sake of an Earthly Kingdom; that therefore, if an Estate of 1200 a Year were assign'd him, he would resign the Kingdom of the Goths and Italians to the Emperor, choosing much rather to spend his time in Husbandry, than to pass his Life amidst the cares of a Kingdom. He concludes his Letter with a Request, that he would be pleas'd to dispatch an Ambassador about this Proposal. Peter and Athanasius were accordingly sent by the Emperor, with Power to take Possession of the Kingdom of Italy in the Emperor's Name, and to assign him a part of the Crown Lands. But Theodatus hearing in the mean time, that some of the Emperors Generals had been kill'd by the Goths in Dalmatia, was so insolent upon this piece of News, that he thought fit to treat the Ambassadors that were coming to him, with Scorn and Contempt. At which when Peter moved with Indignation, made more pressing Instances to engage him to keep his Promise with the Emperor, Theodatus answer'd in the Words of the Objection. Which Words; says Procopius, he levell'd against the Ambassadors, not that they had done any thing amiss, but that have some pretence to accuse them, if he found it convenient to put them

est. Quæ in Legatos, inquit Procopius, jactavit, non quod ipsi quicquam meriti essent, sed ut aliqua criminationum loco haberentur, si eos interficere opportunum videretur. Quæ, cum Paschalio melius, quam aliis, cognita essent; quid immanius, inquit, verbis Theodati, qui cum impulsu perfidiæ legatos Justiniani ludos feceret, eique Petrus alter legatorum robore animi resisteret, ea locutus est quæ Petro, tali viro, talique in re in os dicta & exprobata, quasi ille tale quippiam admisisset, ut falsa & impudentia rejici & pro absurdissimis haberi debuerant. Tertiò, quod asseritur Personam Principis Legato sanctam esse debere, & Securitate ejus non minus, quam Legati, consuli; hoc non solum æquitati Naturali sed juri Gentium congruit; sed quamvis in æstimando delictum contra utrumque Naturalis rationis consideratio haberi potest, in modo tamen sumendi pœnam non tam quid Naturali rationi, quam quod juri Gentium consentaneum est, spectari debet. Id est; prout statuit Gentilis, ut Legatorum violatores eorum principibus dedi soliti sunt, ita Legati, qui contra jus Gentium aut principem ad quem missi sunt, aliquid admiserunt, à suis principibus postquam ad eos remissi sunt, aut puniantur, aut dedantur.

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to Death. Paschalius understanding this Business better than others did, asks what can be more monstrous than these Words of Theodatus, who perfidiously abusing the Emperors Ambassadors, for being bravely opposed by Peter, gave such an Answer, to such a Man, and upon such an Occasion, by which Peter was upbraided to his Face as a Criminal, that it ought to be rejected as false and imprudent, and be reckon'd among the greatest Absurdities. Thirdly, It was objected that the Person of the Prince ought to be as Sacred, and his Safety consulted as much as that of the Ambassadors, in answer to which it must be owned, that this is indeed agreeable both to Natural Equity, and the Law of Nations: But altho' in determining the Nature of the Offence, the consideration of Natural Reason may be used against either; yet in choosing the manner of inflicting the Punishment regard must be had, not so much to natural Reason, as to that which is most suitable to the Law of Nations. According to Gentilis, practice in this Case, is to send those that injure Ambassadors to their Princes; and to send Ambassadors who have violated the Law of Nations, or the Prince they were sent to, to be punish'd or yielded up by their Principals.

Secondly,

Pro Secundâ ratione, quod publica fides fraudulentâ & perfidas protegere non debet, primò, quod multi suggerunt, Legato qui perfidè agit, obtentis publica fidei Securitatem non deberi. Respondetur, quod Princeps per literas credentiâ, Principi ad quem mittit legatum, fidem suam obstringit; Legatus solummodo eidem salutem suam credit, fidem suam omnino non interponit. Singulare exemplum est quod Lucius Cassius ad Jugurtham missus legatus, præter fidem publicam, privatam suam interposuit, quam ille, inquit Sallustius, non minoris quam fidem publicam ducebat. Et in legationibus Estimatio principis non patitur, ut quisquam præterea ad alium principem fidem interponat. Itaque Legatus Expectationem Principis, à quo admissus est, fallere potest, fidem suam, quam non interponit, frangere non intelligitur: Et proinde si Legatus deliquerit, id à principe, qui pro eo fidem interposuit, potius quam ab ipso exigendum est. Et cum is alteri Principi satisfacere teneatur, meritò ejus Legatus ipsius judicio permittendus est. Secundò, quod Author Quæstionis, de Legato qui publicam Administrationem turpi Negotiatione commutat, denunciat; ad declarationem & enumerationem, eorum quæ per-

Secondly, *The Second Argument against the Immunity of Ambassadors was, that the publick Faith ought to be no Security to those that are treacherous and perfidious, this was endeavour'd to be proved by several Particulars, the first whereof was that an Ambassador, who Acts perfidiously can claim no Security from the publick Faith. The Answer is this. The Principal engages his Faith to the Prince, to whom he sends his Ambassador, by Credentials; but the Ambassador gives no Assurance himself, he only commits himself to the Princes Protection. Lucius Cassius is a particular Instance, who being sent Ambassador to Jugurtha, added his own Promise to that of the Publick; which says Sallust, Jugurtha valued as much as he did the publick Faith. Besides in Ambassies, the honour of the Prince admits of no other Security to a Foreign Prince, but his own Word: An Ambassador therefore may disappoint the Expectation of the Prince that receives him, but cannot break that Promise, which he never gave: And consequently upon his misbehaviour, Satisfaction should be demanded rather from his Principal, who has pass'd his Word for him, than from the Ambassador himself. And since the Principal is obliged to give Satisfaction to the offended Prince, his Ambassador ought with good Reason to be left to his Discretion. Secondly, As to what the Author of the Question*

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perperam à Legatis fieri solent, accuratè satis exponuntur: sed quorsum tendant ut de iis iusta pœna sumatur, non satis constanter asserit, cum primò Legatum eorum criminum conscium, hostem aut proditorem, postea læsæ Majestatis reum, criminetur. Sed quantumcunque sit crimen in Legato, ne eo loci locus sit supplicio, jus gentium facit; quod confirmat Senatus Romani de Legatis Tarquinii, qui proditionem concitaverant, iudicium; de quo Livius, quamvis inquit visi sunt commississe ut hostium loco essent, jus tamen Gentium valuit. Deinde, quod ad Majestatis crimen attinet, ex communi Jurisconsultorum sententia constat, quod à Legato utpote extraneo committi non potest, quia non est subditus nec Originis, nec domicilii, nec fidelitatis ratione. Ad id quod contagio reatus in Legato, qui subdito Author est ut tale quid contra Principem suum moliatur, diffunditur; ut quemadmodum, qui filio persuadet, ut patrem occidat, ad pœnam parricidii; ita hic ad pœnam læsæ Majestatis teneatur: Respondetur, quòd eo casu quo Metianus non solum parricidas, sed etiam conscios, & participes eâdem pœnâ afficiendos esse censet, utriq; eidem Juri civili erant subditi, at non ita eodem jure tenentur Legatus

pronounces against the Ambassador that perverts his Office, he describes and numbers up exactly enough the usual Faults of Ambassadors, but does not directly prove, that they may be punished according to his Assertion. For first he accuses the Ambassador who is guilty of such Crimes as a publick Enemy or a Traitor, and as guilty of High Treason. But how great soever the Crime be, the Law of Nations leaves no room for Punishment where it was committed. This was confirm'd by the Judgment of the Roman Senate, in the Case of Tarquins Ambassadors who had formed a Conspiracy; of which Livy says, tho' they had deserved to be treated as Enemies, yet the Law of Nations prevail'd. And as to the charge of High Treason, it is evident from the general consent of Lawyers, that an Ambassador being a Foreigner cannot be Guilty of it, since he is subject neither by Birth, nor Service, nor Allegiance. The Argument for the guilt in which the Ambassador, who has procured Treason in the Subject is supposed to be involved, so that as the parricide and his adviser are both punished alike, so the Ambassador should be guilty of Treason as well as the Subject, is thus answer'd. In the Case of Metianus, where the Parricides and their Accomplices are both to suffer the same Punishment, they are both Subject to the same Civil Law, but the Ambassador and

76 *De Legati delinquentis, &c.*

gatus & subditus contra principem delinquens, prout apparuit, cum ex veteris & veri juris disciplinâ, Romani cives quibuscum Legati Tarquinii conjurârunt, extremo supplicio affecerunt ; Legatos verò incolumes & intactos, uti etiam testatur Livius, dimiserunt.

Pro tertiâ ratione, quòd persona principis, quam Legatus sustinet, ipsum iudicio vel supplicio non eximat, primò asseritur, quòd Legatus, præter mandatum sui principis agens, ut privatus delinquit, & ut privatus puniri possit. Respondetur, quòd si quid agat præter mandatum, & in eo delinquat, Principi & Domino suo est obnoxius : Ita Marsellaer, Legationis perperam gesta actio competit illi cujus illa est ; non illi cui mittitur, quia ejus nihil interest. Sed & si aliquid in prejudicium ejus aut subditorum, quòd eorum intersit, perpetravit, si ut Legatus puniri non potest, ut privatus puniri non debet, quia Persona Legati à personâ hominis non est dividua. Ita opinor si præfectus Militum, Paulum, postquam se civem Romanum profitebatur, loris & virgis castigâisset, haudquaquam profuisset, dixisse se illum ut hominem seditiosum, non ut civem Romanum supplicio affecisse. Secundo Argumento, quòd à more Talionis ducitur,

the Traitor are not under the same Law, as has been plainly proved, when according to the Old true Law, Roman Citizens that had conspired with Tarquin's Ambassadors were put to Death, but the Ambassadors themselves were sent away safely as Livy relates.

Thirdly, They assert in the Third Place, that the Character of the Prince which the Ambassador does not exempt from Judgment and Punishment, and that for several Reasons. First, Because the Ambassador, when he Acts contrary to his Orders, Acts as a private Person, and is to be punished as such. The Answer is, that if he does any thing amiss contrary to his Instructions, he is to his Master and Principal. So says Marsellaer, the Cognisance of an Ambassy ill discharged belongs to the Principal, not to whom the Ambassy is sent, because he is not concern'd in it. But if any thing be committed by the Ambassador prejudicial to the Prince or the Interest of the Subjects, if he cannot be punished as an Ambassador, he ought not so be punished as a private Person, since the publick Character of the Ambassador cannot be separated from the private Character of the Man. I suppose, if the chief Captain had proceeded to scourge St. Paul after he had declared himself a Roman, it would scarce have been allow'd for a good Plea, to have said, he punished him.

78 *De Legati delinquentis, &c.*

ducitur, respondetur, quòd non est diffi-
tendum, quin talis ultionis Exempla in
Historiis occurrant. Sed jus Gentium non
tantum cavet mittentium dignitati, sed e-
tiam ejus qui mittitur, securitati. Quare
in hoc casu Legato fit injuria, etiam si ei,
qui misit, nulla fiat; & proinde, inquit
Grotius, Scipio Africanus non ex magna-
nimitate tantum, sed etiam ex justitiâ,
Legatos Carthaginiensium dimisit, etiam si
Legati Romanorum ab iis malè habiti es-
sent. Itaque etsi justius sit, Legatum cul-
pam propriam, quàm principis luere, ex-
emptio est jurisdictione, quam persona
principis habet, eidem ex facto ejusdem
Principis autem non debet; cum quod in
favorem introductum est, non debet in
præjudicium verti. Tertio Argumento à
Principi ad Legatum scilicet, quòd Prin-
ceps, in alieno territorio contra ejus prin-
cipem delinquens, ab eo puniri potest,
multò magis ejus Legatus eodem modo
delinquens judicio & supplicio subji-
ciendus sit, respondetur, quòd antecedens non
est in confesso, &, si verum esset, à prin-
cipe ad Legatum Argumentum non valet.
Ad primum quod attinet, Jurisconsulti me-
lioris notæ negant principem extra ditio-
nem suam merè privatum esse; quia actus
voluntariæ Jurisdictionis exercere potest:
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as a Seditious Fellow, and not as a Roman Citizen. The Second Argument is taken from the practice of Retaliation, and is thus answer'd. It must not be deny'd, but such Examples may be found in History, but the Law of Nations takes care not only of the Honour of the Principals, but also of the Safety of the Ambassadors. Wherefore in this Case, the Ambassador is injured, tho' his Principal be not; and therefore says Grotius, what Scipio Africanus did in relation to the Carthaginians, was as much the dictate of Justice as Magnanimity, when he dismissed their Ambassadors, notwithstanding the Roman Ambassadors had been scurvily used by them. Therefore, tho' it be more just for an Ambassador to suffer for his own, than his Princes Fault, the Immunity due to the Character of his Prince ought not to be taken from him upon the Account of the Prince, since a Privilege ought not be turn'd to a Man's disadvantage. The Answer to the Third Argument, from the Prince to the Ambassador, namely, because a Prince may be punish'd for a Fact in a Foreign Dominion, much more may his Ambassador; is as follows. It is not acknowledged that a Prince may so be punish'd, but suppose it were granted, the Inference from the Prince to his Ambassador were just. As to the first, the most eminent Lawyers deny that a Prince out of his Dominions is no more than a private

Quemadmodum Proconsul extra Provinciam sibi decretam Adoptionibus & Manumissionibus Authoritatem suam imperitari potuit. Sed & quòd Princeps in alieno territorio Jurisdictionem etiam criminalem exercere possit, Exemplo indubitabili compertum est. Fleta inter juris Anglicani Authores vir eximius, quem clarissimus Johannes Seldenus luci restituit de Placitis Aulæ Regis ita scribit; Senescallus ex officio sibi commissio potestatem habet, quoad omnes injurias omnesque Actiones criminales & personales & conquerentibus plenam justitiam exhibere, & hæc omnia, inquit, ex officio suo licitè potest facere, non obstante aliquâ libertate, etiam in alieno regno, dum tamen reus in hospitio regis poterit inveniri, secundùm quod contigit Parisiis anno 14. Edvardi Regis, de Ingelramo de Nogent capto in hospitio Regis Angliæ, ipso Rege tunc apud Paris agente, cum discis argenti furatis recenter supersacto, Rege Franciæ tunc præsentem, & unde, licet Curia Regis Franciæ de prædicto latrone Castellatum Paris petita fuerit: Habitis tunc inde tractatibus in concilio Regis Franciæ consideratum fuit quòd Rex Angliæ illâ regiâ prærogativâ & hospitii sui privilegio uteretur & gauderet. Qui coram Roberto filio

private Person, because he may still perform Acts of voluntary Jurisdiction: As a Proconsul out of his Province, may shew his Authority by Adoptions and Manumissions. But it appears from an undoubted Precedent, that a Prince may Exercise even his Jurisdiction in criminal Causes in a Foreign Dominion. Fleta, one of the most celebrated English Lawyers, whose Book the famous Selden has published, writes thus of the Pleas of the Kings Court. The Steward has Authority by his Office in all Injuries and Actions both Criminal and Personal to administer Justice to all Plaintiffs, and all these things he may lawfully do by Virtue of his Office, notwithstanding any Privilege to the contrary; and that also in a Foreign Kingdom, as long as there can be any guilty Person found in the King's Palace, according to that which happen'd at Paris in the Fourteenth Reign of King Edward, about Ingelram de Nogent, taken in the Palace of the King of England, while the King was at Paris, with Silver Dishes stolen by him, upon which Fact just then committed, the King of France being then present, and about which, tho' the Court of the King of France was petition'd by the Castellan of Paris, concerning the foresaid Thief, many debates being holden on both sides, it was agreed in the Council of the King of France, that the King of England might use and enjoy that
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filio Johannis milite, tunc hospitii Regis Angliæ Senescallo, convictus, per considerationem ejus Curia suspensus est in patibulo Sancti Germani de pratis. Si Henningius Arnifæus, qui antequam librum de jure Majestatis scripsit, fuit in Angliâ, & ex rerum Anglicarum monumentis, prout apparet, multa animadvertit, hunc Fletæ locum consuluisse; Opinor non tam temerè Majestatem Principis, cujus assertor & propugnator videri voluit, regni finibus coercuisset, ut quamprimum exierit, eum ad hominis privati conditionem redactum pronunciaret. Sed prætermittâ de Jurisdictione quæstione, ubique princeps retinet dignitatem, ut Proconsul statim atque urbem egressus, antequam venit in Provinciam, ubique habet Proconsularia insignia; ita sentit Hotomannus; qui Princeps, inquit in territorio alterius principis, & si authoritatem non habet, dignitatem tamen retinet; nec Legatus, qui principis personam sustinet in alieno territorio Legato cujusquam, nisi superioris principis locum facillè cedit. Et si Princeps in alieno territorio dignitatem verè regiam habet, ut alterius principis jurisdictioni subjiciatur, haud regulæ congruit, quod par in parem non habet imperium. De Mariâ Scotorum Reginâ in Angliâ

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Royal Prerogative and Privilege of his Palace. Which Thief convicted before Robert Fitz John, Knight, then Steward of the Household of the King of England, was by Judgment of the Court hung upon the Gallows of St. Germans in the Fields. If Henningius Arniseus, who was in England before he wrote his Book de jure Majestatis, and made good use of many Antiquities he saw here, had consulted this Passage in Fleta, he would not so rashly have restrain'd the Majesty of the Prince within his own Dominions, whose Rights he pretends to assert and maintain; nor have declared he is reduced to the Condition of a private Person, as he is got out of his Kingdom. But, leaving the Question about the Jurisdiction of the King, the Prince preserves his Dignity in all Places; as the Proconsul immediately upon the leaving the City, has every where the Badge of his Authority, before he arrives at his Province. Hotoman is of this Opinion. The Prince, says he, that is in the Country of another, tho' he has no Authority, retains his Dignity. And an Ambassador who represents his Prince in a Foreign Country, gives Place to the Ambassador of none but a Superior Prince. Now if a Prince maintains his Royal Dignity, in the Dominions of another, for him to be subject to the Jurisdiction of that Country is by no means agreeable to the Old Maxim, that one Equal

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Angliâ supremo supplicio affecta quænam opiniones fuerint, ex Camdeno, & de iis quodnam ipsius iudicium alibi relatum est. Ad id quod asseritur malè cum principibus actum iri, si in eorum territoriis, aliis principibus in eorum perniciem conjurandi licentia sit permittenda; respondetur, quòd talis licentia neutiquam est permittenda, sed eos bello prosequi juri Gentium consentaneum est; & si, cùm in territorio Principis, in quem conjurârunt deprehensi sunt, præsentî vindictâ uti melius videbitur; Jurigentium convenit pro hostibus declarare, unde non expectato iudicio; cuivis eos interficere impunè liceat.

Supereſt Argumentum à Principe ad Legatum expendere quod Gentilis probare non videtur, qui plus in Principem, quam in Legatum perduellem licere affirmat. Quod nec ratione caret, quia jus Gentium magis prospicit Legationibus, utpote frequentioribus, & maximè necessariis, quam principum inter se congressibus, qui sunt plerumque voluntarii & rariùs usurpantur; ut Jure Romano Tribunitia potestas, quod erat sacrosancta, majori securitate munita fuit, quam Potestas consularis; unde Imperatores Tribunitiam potestatem

has no command over another. What Men thought of the Death of Mary Queen of Scots, may be seen in Cambden; and which of those is his Opinion, I have shown in another Treatise. As to the Assertion, that Sovereigns would be in a bad Condition, if other Princes were allow'd to plot their Destruction in their own Dominions, 'tis answer'd, that such a Liberty is by no means allowed, but they may be prosecuted in an open War, agreeably to the Law of Nations: And if it appears better to inflict immediate Punishment upon a King, that is taken in a Foreign Country, plotting against the State, it suits better with the Law of Nations to proclaim War against them, and declare them open Enemies, and then any one may safely kill them without waiting for any judicial Process.

The Argument from the Prince to the Ambassador remains to be consider'd; this Gentilis seems not to admit, affirming it lawful to do more against a Prince, than against his Ambassador, which is not unreasonable. For the Law of Nations takes more Care of Ambassies, as being more frequent and of absolute Necessity; than it does of Royal interviews, where are generally by Choice, and not so often used: And as by the Roman Law, the Power of the Tribunes was better guarded, because it was Sacred, than the Consular Authority, for which Reason the Emperors used to assume that Ho-

testatem assumere solebant quod de Augusto, Suetonius; de Othone refert Tacitus. Ita jure Gentium quo Legati sacrosancti habebantur, plus securitatis iis, quam ipsis regibus indultum videri potest. Secundò, quo est Gentilis ratio, quia Legati à principe admissi securitas fide publicâ nititur, quæ jure Gentium interposita intelligitur; Principis verò in alterius territorio pendet ab ejus humanitate tantum, & Justitiâ communi. Tertiò, quod Legatus ad suum principem remissus ab eo puniri vel dedi potest; Princeps verò ad suos dimissus ordinariò à quo puniri aut dedi potest, neminem habet. Quartò, quod Princeps in alieno regno hostis declarari potest, Legatus vero quamvis id quod hostile videtur, perpetraverit, hostis declarari non potest; quia subditi pro hostibus capi non possunt; priusquam eorum principibus bellum denunciatur.

Quod pro ratione habetur quarto loco, quod Legatis, qui nunc dierum Ordinarii dicuntur, juris Gentium præsidium non debetur, quoniam antiquitus Legati hujusmodi erant incogniti, & hodiernis temporibus non necessarii, sed potius perniciosi judicantur: Respondetur, quod Legatorum diuturniorum usus apud antiquos non fuit penitus incognitus; Cum Legatos
Athe-

hour, as Suetonius relates of Augustus, and Tacitus of Otho; so by the Law of Nations, the Character of Ambassadors being Sacred, they may seem to be favour'd with greater Security, than Kings themselves. Gentilis gives another Reason; the Security of an Ambassador admitted by a Prince depends upon the publick Faith, which is supposed to be given by the Law of Nations: But the Security of a Prince in a Foreign Dominion, depends only upon Humanity and common Justice. Third, An Ambassador remitted to his Principal, may be either punished or surrendred; but a Prince sent home, has none to punish or deliver him up. Fourth, A Prince in another State may be proclaim'd an Enemy; but an Ambassador tho' he really be, cannot be declared an open Foe, because Subjects cannot be taken for Enemies, till War is denounced against the Princes.

Fourth, The Fourth Argument against the Immunity of Ambassadors is, that the defence of the Law of Nations is not due to those we now-a-days call Ambassadors in Ordinary, because their use was Anciently unknown, and they are now reckon'd unnecessary, and prejudicial to the Government; in answer to this, it is said, that the use of Ambassadors Resident sometime was not also unknown to the Antients:

88 *De Legati delinquentis, &c.*

Atheniensium duos Annos Demetrio adhæsisse Plutarchus narret, & Demosthenes de Leone refert quod cum Timagorâ quadriennium in Legatione fuerit; & Legationem Romanam apud Antiochum, durante bello Macedonico, commoratum fuisse tradit Zonaras. Nec solum Legationes provinciales, sed etiam gentium fœderatarum diuturniores Romam mansisse ex Livio colligere licet. Sed nec diuturnitas Legationis, quæ semel admissa & permessa est, magis ejus privilegiis derogare debet, quam induciæ decem dierum Induciis decem annorum in fide datâ observandâ sunt præterendæ. Et quamvis Paschalius, qui, cum scriberet, se per septennium apud Rhætos spinosâ Legatione Regis Galliæ functum, profiteretur; quæ in iis sunt incommoda culpat, idem de Mercatorum Negotiatoribus in partibus transmarinis, sine quibus commercium exerceri non potest, dici & fingi potest. Quemadmodum Honorius & Theodosius de suis & Persarum Regi Subjectis caverunt, ne alieni regni, quod non convenit, scrutentur Arcana. Sed hoc cum iis qui Barbari habebantur, non cum aliis quibuscum fœdus est & Amicitia, quorum Legatis & Mercatoribus eadem licentia utrinque permittitur. Gentilis, cum de

The Proper Judge, &c. 89

For Plutarch tells us, the Athenians Ambassadors continued Two Years with Demetrius. Demosthenes says, that Leo and Timagoras were gone Four Years upon an Ambassy. Zonaras relates, that the Roman Ambassadors, stay'd with Antiochus during the whole Macedonian War, 'tis plain from Livy, that not only Ambassadors from the Provinces, but those of their Allies likewise, were Resident at Rome a considerable Time. Besides, the continuance of an Ambassy once admitted ought no more to derogate from its Privileges, than a Truce of Ten Days ought to be better observ'd, than a Truce of Ten Years. And altho' Paschalius, who at the time of his Writing, owns he had gone thro' a very troublesome Residence of Seven Years among the Grisons, finds fault with the Inconveniences of them; yet the same may be said and supposed against Factors beyond Sea, without whom there can no Commerce be carried on. Thus Honorius and Theodosius in regard to their own Subjects and the Persians, forbid them to meddle with the Secrets of a Foreign State. But this Provision was made, upon the Account of those who were reckoned Barbarians, not of Friends and Allies, whose Ambassadors and Merchants enjoy the same Privileges on both sides. Gentilis giving his Opinion about these Ambassies, thinks, if there be good Rea-

90 *De Legati delinquentis, &c.*

de his iudicium profert, melius cenſet, quippe quòd eos admittendi bona Occaſio fuerit, quod inter principes frequentiora intercedunt Negotia, quàm ut commodum ſit jugiter Legatos mittere, & non nos potius alterum apud alterum habere. Alii, inquit, turpiter faciunt ipſos eſſe Speculatores & ad hoc haberi; ego non facio. Et cum Gentili idem cenſet Beſolus. Deinde pro alterâ parte rationis, ſcil. quod neceſſarium ſit, & maximè expediet, ut Legatus in loco, ubi deliquit, puniatur, Primò quam apprimè illud Fabii ad hoc conducat, re inſpectâ apparebit. Quintilianus pro hypotheſi ſeu facti ſpecie ſic ſupponit; cum civitas fame laboraret, Legatus ad frumentum comparandum miſſus, cum ad præſtitutum diem non rediiſſet, & multi interea cives inedia periſſent, eo nomine vocatur in iudicium; Accuſator, quaſi reus pro ſe Legati privilegium allegaturus fuiſſet, de licentiâ peccandi Legatis non permittendâ diſferit. At qui hic Legatus! Civis ad comparandum frumentum ad partes exteras abligatus; *i. e.* verius Civis, civitatis negotiorum geſtor, quam Legatus. Contra quos deliquit? Contra concives ſuos, non contra homines gentis exteræ, ubi in ius vocatur? Non apud eos, ad quos miſſus eſt,

son to admit them at all, 'tis better to have Residents, since the Negotiations of Princes are so frequent, that 'tis very inconvenient to be constantly sending Ambassadors and never have any reside with each other. Some, says he, think scandalously of them, that they are Spies and employ'd as such. But I do not. Besoldus is of the same Opinion. As to the Second Part of the Proposition, that 'tis necessary and highly Expedient to punish an Ambassador, where he is guilty, because first Fabius says so; how well his Expression suits this purpose, will appear upon Examination. Quintilian puts this Case. An Ambassador is sent to buy Corn for a City in a great Famine, but returning, not at the Day prefixed, and many perishing in the mean time, he is brought to a Tryal. The Prosecutor, supposing he would plead the Rights of an Ambassador, proves that Ambassadors are not licensed to Act what Villanies they please. But what sort of an Ambassador is this? Why, a Citizen deputed to buy Corn abroad, that is, properly speaking, rather a Factor than an Ambassador. Whom has he injured? his Fellow Citizens; not Foreigners. Where is he arraigned? not there, whither he was sent, but in his own Country before his Principals, to whom he was undoubtedly obliged to show the Reasons that delay'd his return. From which 'tis plain, as the Prosecutor himself is
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92 *De Legati delinquentis, &c.*

est, sed coram suis unde missus est; quibus retardati itineris rationem reddere omnino tenebatur. Ex quibus apparet, quod Accusator contra eum dicere fingitur non minus puerile sit supponere hunc neglecti Officii reum privilegium Legati obtinere, quam, alienum à quæstione de Legato delincente apud eum, ad quem missus est, puniendo. Secundò ad Argumentum, quòd si Legati, ubi delinquant, non puniantur, necesse erit Legatos finibus arcere, & omnino non admittere; respondetur, magis verisimile esse, si Legati, in locis ubi Legationes obeunt, judiciis & pœnis subjici teneantur; quod, qui suæ salutis curam habent à Legationibus omnino se subducent. Nam valdè in lubrico, ut ait Grotius, locatur salus Legatorum, si actuum suorum rationem aliis reddere debeant, quàm iis, à quibus mittantur. Nam cum plerumque diversa, sæpe etiam adversa sint consilia eorum qui mittunt Legatos, & eorum qui recipiunt, vix est ut non semper aliquid in Legatum dici possit, quod criminis alicujus speciem præ se ferat, quod etiam censet Gentilis, ubi de Legato speculatore agit. Tertiò, ad Argumentum, quod si Princeps, cujus est Legatio, ultionem negligat, quòd gravior fiet injuria, quæ non sit nisi Armis vindicanda,

supposed to Argue, that as 'tis trifling and childish to suppose, the Person accused for neglecting his Duty would plead the Privilege of an Ambassador, so 'tis Foreign to the Question in Hand, whether a Criminal Ambassador may be punished in the Realm he is sent to. Secondly, it was urged, that if Ambassadors may not be punished where they are guilty, it will be necessary to prohibit Ambassadors and entirely refuse to admit them. 'Tis answer'd, that 'tis more probable there would be no Ambassy at all, if Ambassadors were liable to Judgments and Punishments where they discharge their Ambassies, since they who consult their Safety, would get out of the Way from such dangerous Employments. For as Grotius observes, the Safety of Ambassadors is placed on a slippery Bottom, if they be obliged to account for their Actions to any but their Principals. For since the Measures of those that send and of those that receive Ambassadors are generally different, and often opposite, it can scarce ever happen but something might be charged upon the Ambassador, which carries the Colour of a Crime. Gentilis treating about an Ambassador that is a Spy, says the same thing. Thirdly, To the Third Proof, that if a Principal neglects to punish the Ambassador and so aggravates the Injury which now can be punish'd only by Arms, that therefore 'tis better to atone for the publick Mischiefs by punishing one

canda, & consultius sit publica mala unus facinorosi pœnâ, quam plurium insonitum sanguine expiare; Respondetur, si Legatus alibi puniatur; & Princeps, qui eum misit, se & Legatum indignè injuriâ affectum censeat, Legati Supplicium (quod inquit Grotius) ejus Authores belli periculis nequaquam eximet.

C A P U T IV.

De Exemplis pro Legati Immunitate.

EXempla, quæ pro Legati immunitate faciunt, ad diversa delictorum vel Criminum genera quæ à Legato committuntur, referri possunt; utpote, quod sint vel contra privatum aliquem eorum subditum.

Prioris generis habentur.

Primò, Si verbis contumeliam ipsi inferat.

Secundò, Si speculator deprehensus fuerit.

Tertiò, Si contra ejus vitam, aut imperium aliquid machinetur.

Posterioris generis sunt.

Si Homicidium, Adulterium, Latrocinium, vel aliquid hujusmodi Legatus perpetraverit.

Primò,

one Malefactor, than by shedding the Blood of many guiltless Persons, this is the Answer; suppose the Ambassador is punished abroad, and his Principal thinks himself and his Ambassador unworthily treated and undeservedly punished; the Punishment of the Ambassador will by no means secure the Authors of it from the Perils of War.

CHAP. IV.

Examples for the Immunity of Ambassadors.

THE Examples, which make for the Immunity of Ambassadors, may be reduced to the different sorts of Crimes, committed by an Ambassador. They are either against the Prince, or the State he is sent to, or against a private Subject.

Crimes of the first kind are.

First, Abusive Language.

Second, Being a Spy.

Third, Plotting against the Life or the Government of the Prince.

Crimes of the Second kind are.

Murder, Adultery, Robbery, or the like.

First,

Primò, Quòd Legatus propter verba contumeliosa vel petulantia punitus non sit, facit primò quod Romani Anium Sertinum, Legatum Latinorum, loquentem tanquam Victorem Capitolis, non tanquam Legatum, jure gentium tutum, illæsum dimiserunt, & si inquit Livius tantus ardor populi animos invaserat, ut ipsum proficiscentem Magistratus, qui jussu Consulis prosequeretur, magis quam jus Gentium ab irâ impetûque hominum tegeret. Secundò, quod Plutarchus ingratam Antiochi Malignitatem dixerit incusaveritque, quod Zenocratem, principem Legationis Atheniensium libere loquentem non tulerit. Tertiò, cùm Rhodii Legatos ad Romanos & Persea de pace miserant, Romani indignè ferentes eos dimiserunt, & ob verba quibus, uti videbantur, reipublicæ Rhodiorum minati sunt, unde aliam Legationem Rhodii miserunt, quæ eorum indignationem deprecaretur cujus Princeps, superbum, inquit, verborum iracundi oderunt, prudentes irident, utique si inferioris adversus superiorem est, Capitali pœnâ nemo unquam dignam judicavit. Quartò, quod Veneri Regis Galliarum Fæcialem reipublicæ bellum denunciantem, injustitiamque, atque alia exprobantem, religiose, inquit Guicciar-

First, One Example to show, that an Ambassador is not punish'd for ill Language is that of Anius Setinus the Latin Ambassador to the Romans; who tho' he talked more like a Conqueror of the Capitol, than an Ambassador, yet being guarded by the Law of Nations was dismissed in Safety, altho', says Livy, so great a Fury had seized the Minds of the People, that the Officer, that attended him at the command of the Consul, was a better Protection than the Law of Nations, from the rage and violence of the People. Another Example is Plutarch, who taxes Antiochus with Ingratitude and ill Nature, for not brooking the freedom of Speech used against him by Zenocrates, the Head of the Athenian Ambassy. Thirdly, The Rhodians having sent Ambassadors to the Romans and Perseus to mediate a Peace, the Romans dismiss'd them with Indignation, and threatned to punish the State for their Expressions, upon which Account the Rhodians sent another Ambassy to stop their Resentment by entreaties, the Chief of whom urged in their behalf among many other things that Passionate Men are offended, but wise Men scoff at the Insolence of Words; especially, if the Affront be offer'd by an Inferior to a Superior, but no Man ever thought it a Capital Crime. Fourthly, Guicciardine says, the Venetians dismiss'd with Reverence an Herald of the Tribune King,

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ciardinus dimiserunt. Quintò, quod cum Paulus Dzialinus Sigismundi, Poloniæ Regis, Elizabethæ Angliæ Reginæ, in folio coronâ procerum circumfuso Sediti, literas tradidisset; & ad inferiorem conclavis partem recedens, vultu ad Reginam obverso, altâ voce Latino Sermone conquestus esset, jure Gentium violato, Commerciâ cum Hispanis prohibitâ, &c. Regina exemplo audaciam hominis modestâ eloquentiâ sic compressit, quam decepta fui? Legatum, inquit, Expectavi, Heraldum inveni, non possum satis mirari tantam audaciam & temeritatem. Nec quicquam aliud cum eo tantum, quam quod ipsum, quoad Negotium Legationis ad Consiliarios referret.

Secundò, Quòd Legatus Speculator deprehensus punitus non sit, facit primò quod Posthumius Dictator Romanus Volscos quosdam Legatos, agnitos & convictos Speculatores servavit, quia Legationis nomini quòd præ se ferebant, plus dandum censuerit, quam facinori certo rependendum. Secundò, quod Stephanus Rex Poloniæ moschi Legatis responderit, etsi jure Gentium eos hostium loco habere possit, qui non pacis faciendæ, sed explorandi ac se
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who denouncing War against that Republick, charged them with Injustice and many other Crimes. Fifthly, Paul Dzialinus, Ambassador from Sigismond King of Poland to Elizabeth Queen of England, having deliver'd his Letters to her as she was sitting on her Throne surrounded with Nobles, retired to the farther End of the Room, and turning to the Queen, complained with a loud Voice in a Latin Oration, that she had violated the Law of Nations, by prohibiting Commerce with the Spaniards, by &c. The Queen immediately corrected the boldness of the Man, by these eloquent Expressions of Modesty. How much was I mistaken! I expected an Ambassador, but have found an Herald; so much boldness and so much rashness I cannot enough admire. But she took no further Notice of it, only referred his Business to her Council.

Secondly, To shew that an Ambassador tho' discover'd to be a Spy may not be punish'd there, the following Examples. First, Posthumius when he was Dictator, saved the Lives of the Volscian Ambassadors, who were detected and convicted of being Spies, because he thought more was due to the Character of Ambassadors which they bore, than to the guilt of the Crime, which they had committed. Secondly, Another Example, is the Answer of Stephen King of Poland to the Muscovite Ambassadors; that

circum veniendi causâ venissent, nolle tamen ob eorum perfidiam à perpetuâ mansuetudine ac lenitate suâ recedere. Itaque ipsi domum reverterentur, ad literas Mofchi se per hominem suum rescripturum.

Tertiò, Quòd Legatus, qui in Principis vitam aut imperium aliquid machinatus est, punitus non sit, primò quod cum Legati Tarquiniorum bona eorum repetentes clam recuperandi regnum consilia fruerent, ambientes Nobilium adolescentium Animos pertentabant, quibus literas ab Tarquiniis reddunt, ac de accipiendis clam nocte in urbem regibus colloquuntur, evincuntque instando, ut literæ sibi ad Tarquinius darentur; datæ literæ ut pignus fidei essent manifestum facinus fecerunt, nam cum pridie, quam Legati ad Tarquinius proficiscerentur, cœnatum forti apud Vitellios esset, conjuratique ibi, remotis arbitris, multa inter se de novo consilia egissent, Sermonem eorum servus unus excepit, qui jam antea id senserat agi; sed eam occasionem, ut literæ Legatis darentur, quæ rem coarguere possent, expectabat; postquam datas sensit, rem ad Consules detulit, Consules ad deprehendendos Legatos, conjunctosque profecti domo

tho' he might by the Law of Nations treat them as Enemies, who came not to make Peace but Spies to deceive him ; yet he would not for their Treachery, part with his usual Mildness and Clemency ; and therefore they should be sent back, but he would Answer the Letters of the Czar by a Servant of his own.

Thirdly, Examples, where Ambassadors have not been punished for attempting any thing against the Life of the Sovereign, or against his Government. First, When Ambassadors sent by the Tarquins to recover their Estates, were working under Hand to regain his Kingdom, they used all their Interest to find out the Disposition of the Young Nobles, and gain them to their Party ; and delivering Letters to them from their Principals, they consult how to receive the Kings again privately by Night into the City, and prevail upon them by their Importunity to send Letters by them to the Tarquins. But these Letters, which they delivered as a Pledge of their Fidelity discover'd the Treason. For, the Day before the Ambassadors were to return to the Tarquins, they happen'd to sup with the Vitellii, and there having taken an Oath of Secrecy, they consider'd afresh by themselves what means they should use. But a Servant, that had found out before what they were about, over-heard their Discourse ; waiting only for this Opportunity of discovering

domo sine tumultu rem omnem oppressere, literarum imprimis habitâ curâ ne interciderent. Proditoribus extemplo in vincula coniectis, de Legatis paululum dubitatum est, & quanquam visi sunt inquit Livius, digni ut hostium loco essent, jus tamen Gentium valuit. Secundò, Quod Sylla cum à Voluce (quem Bocchus pater ad eum miserat) persuasus, noctu proficiscens, in Jugurthæ Exercitus periculum incidisset, ac qui cum eo erant, crederent se à Voluce proditos & insidiis circumventos, dicerentque eum manu vindicandum, neque tantum sceleris inultum relinquendum, quanquam eadem existimabat, ab injuria tamen, inquit Sallustius, Maurum prohibuit. Deinde eum, quoniam hostilia fecerat, Jovem maximum obtestatus uti sceleris atque perfidiæ Bocchi testis adesset, castris exire jussit. Tertiò, Quod Syphacis nuncio procuranti necem Masinissæ nihil aliud malè factum est, quam quod sceleris reprehensus esset. Quartò, Quod Alvarez à Quadrâ Episcopus Aquilanus Hispani in Angliâ Legatus, Pontificiorum spes de Romanâ religione restaurandâ foverat, & suspectus quasi rebus in Anglia turbandis, & amicitia inter Hispanum, & Reginam discindendæ totus incumberet, effecit ut Regina de homine

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the whole Business, by the Letters deliver'd to the Ambassadors. Which as soon as he perceived he gave Information to the Consul, who immediately went to seize the Ambassadors and the Conspirators, and quash'd the whole Business without any disturbance, taking particular care that none of the Letters should be lost. The Traitors were immediately thrown into Prison, but they were at a loss how to deal with the Ambassadors. However, says Livy, tho' they had deserved to be used like Enemies, the Law of Nations took Place. Secondly, When Sylla at the advice of Volux, the Ambassador of his Father Bocchus, by marching in the Night, was in danger of falling into Jugurtha's Army, and his own Men believed themselves betray'd by Volux into an Ambuscade; and were for laying violent Hands upon him, that such a Piece of Villainy might not escape unpunished; yet says Sallust, tho' Sylla was of the same Opinion, he kept the Moor from Violence, but because he acted as an Enemy, he order'd him to leave the Camp; first appealing to Jupiter to be a witness to the Treachery of Bocchus. Thirdly, When the Ambassador of Syntax had procured the Death of Mesinissa, no other harm was done to him, besides a Reprimand given him for his Crime. Fourthly, Alvareza Quadra Bishop of Avila, Spanish Ambassador in England, encouraged the Pa-
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revocando apud Hispanum ageret, ille autem pietatis nomine excusavit, & incommodo cum principibus agi scripsit, si ex quâlibet offensa Legati domum revocarentur; nec quicquam postea passus est, sed in Angliâ naturali morte fatiscessit. Quintò, Quod Bernardinus Mendoza qui sceleratis machinationibus cum Throgmortone & aliis ad exteros in Angliam introducendos & Reginam deturbandam, se immiscuisset; quamvis, ut multis visum est, sacrosancto legationis jure ad prodicionem abusus, antiquâ severitate ferro & igne persequendus esset, regno tamen excedere jussus est, & ne Hispanus non scelera Mendozae sed Legati jura violari existimant, Gulielmus Wadus, Regio consilio ab Epistolis in Hispaniam missus est, qui liquidò doceret quam male Legationis munus ille obiisset.

Quartò, Quod Legatus qui contra subditum privatum deliquit punitus non sit, facit primò, quod cum Lampfaceni tumultuarentur, & Verrem ob vim virgini intentatam interficere conarentur, abstinuerunt, cum cives Romani, qui ibi negotiabantur,

pists to restore Popery, and was so far suspected of making it his whole design to create Disturbances, and to break the Peace between the Spaniard and the Queen, that she sent to the King to recal him; but the King pleaded Loyalty in his behalf, and wrote Word, that it would be very inconvenient for Princes to recal their Ambassadors for every Offence. This was all the Punishment of the Ambassador, who died afterwards in England a Natural Death. Fifthly, Bernardine Mendoza, who had conspired with Throgmorton and others in their wicked Designs, to introduce a Foreign Power and dethrone the Queen of England; tho' many thought he might according to the Antient Discipline, be pursu'd with Fire and Sword for abusing the sacred Rights of Ambassj with Treason, was only ordered to quit the Kingdom; and that his Principal might not think the Privileges of his Ambassadors infringed for want of the Knowledge of Mendoza's Crimes; the Queens Secretary William Wade was sent into Spain, to acquaint the King with the ill Behaviour of his Ambassador.

Fourthly, Examples against punishing Ambassadors for wronging a private Subject, are. First, The Lampfacenes who in a Tumult were going to kill Verres for offering Violence to a Virgin, but forbore at the Request of the Roman Merchants, entreating them to consider,

bantur, orarent ut apud se gravius nomen Legati quam injuria Legati putaretur, dicentes levius peccatum fore, si homini scelerato pepercissent, quam si Legato non parcerent. Secundò, Quod Herodes Rex Judæorum cum Arabum Regis Legatum solenni cœnâ excepisset, & Solomonem Sororem suam iisdem dapibus adhibuisset, & Arabs non solum oculis & nutibus procacibus, sed etiam petulcis gestibus in eam exardescerat, nullâ aliâ pœnâ eum affecit, quàm quod re infectâ illico discedere juberetur.

Quartò, Quod cum Henrico primo regnante, Honorius secundus Romanus Pontifex Cardinalem in Angliam Legatum misisset ad cognoscendum Ordinis Sacerdotalis statum, & is celebre Antistitum conventum Londini egisset, in quo inter cætera severè corrigenda acriter invec-tus est in Sacerdotes qui in aliquâ libidinis famâ essent: Hoc cum nonnullos tangeret, qui etiam odorati erant illum hominem impurum fuisse, eum cæperunt ita observare ut paulo postea in peccato deprehenderetur; quo ille probro affectus domum abiit, cum nihil aliud passus esset, quam quod inimicis suis obtrectandi ridendique, aliis ejusdem ordinis doloris & ignominie occasionem præbuerit.

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der, that the Honour of an Ambassador was more to be regarded than his Crime; telling them withal, it was a much smaller Fault to spare a Malefactor, than not to spare an Ambassador. Secondly, Herod King of the Jews, who feasting an Arabian Ambassador at a noble Entertainment, made his Sister Salome sit at Table with them, whom the Arabian first lying with wanton Glances, then making licentious Signs, at last broke out into lascivious Gestures; but Herod dismiss'd him without any other Punishment than Orders to be gone immediately without performing his Business.

Fourthly, In the Reign of Henry I. Pope Honorius II. sent a Cardinal Legate into England to examine the State of the Clergy. The Legate, having conven'd a great Number of the Prelates, among other Irregularities which deserved a severe Correction, he bitterly inveighed against the Priests that were Notorious for Incontinence. Some of them that were touch'd by his Reflections suspecting the Cardinals Chastity, watch'd him so narrowly, that he was soon after caught in the very Fact; at which disgrace he return'd Home, meeting with no other Punishment than Reproach and Derision from his Enemies; and resentment and disgrace from his own Order, to whom he had given so fair an Occasion.

CAPUT VI.

De Exemplis contra Legati immunitatem.

QUOD Legatus propter verba contumeliosa & ingrata supplicio affectus sit, facit primo quod Antonius Augusti Cæsaris Legatum, quod ipsum procaciter esset allocutus loris constringi & cædi fecit. Secundò, Quod Alexander Severus Legatos Persicos, ingrata quædam à se postulantes, omni cultu adempto in Phrygiam relegavit. Tertiò, Quod Theodatus Petro Justiniani Legato liberius alloquente dixerit, quod si Legatus in Regem contumeliosus fuerit, occidi poterit. Quartò quod Emanuel Imperator Constantinopolitanus Dandalum Legatum Venetorum liberius loquentem orbavit Oculis.

Secundò, Quod Legatus, speculator compertus, punitus sit, facit, primò; quod Phileas Tarentinus qui cum per speciem Legationis Romæ fuisset, aditum sibi ad obsides Tarentinos invenit, eosque crebris alloquiis sollicitatos, corruptis ædituis, custodia eduxit, & ipse comes itineris factus profugit, deinde ab itinere una cum illis

C H A P. VI.

Examples against the immunity of Ambassadors.

First, Examples for punishing Ambassadors for Evil speaking. First, Anthony order'd the Ambassador of Augustus Cæsar to be bound and scourged for speaking sawcily to him. Secondly, Alexander Severus stripped the Persian Ambassadors of every thing, and banished them to Phrygia for making unacceptable Demands. Thirdly, Theodatus told Peter Justinian's Ambassador, who was speaking too freely; that an Ambassador may be killed for reviling a Prince. Fourthly, Immanuel, Emperor of Constantinople, put out the Eyes of Dandalus the Venerian Ambassador for talking too freely.

Secondly, Examples of Ambassadors that have been punished for Spies. First, Philias the Tarentine being at Rome, under pretence of an Ambassy, had gain'd admittance to the Hostages of the Tarentines, and prevailing upon them by frequent Visits, bribed their Keepers, and conveyed them out of Prison. But as he was attending them in their Escape, he was taken

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illis retractus, deductus in comitium, virgisque approbante populo cæsus de saxo dejectus est. Secundò, quod Dux Mediolanensis punivit Francisci primi Regis Galliæ Ministrum quendam de Morveilles, qui simulavit se negotia sua in Italiâ gerere, in effectu tamen fuit speculator aut eo fine missus.

Tertiò, Quod Legatus, qui in principis aut Populi, ad quem missus est, perniciem aliquid machinatus est, punitus sit facit primò, quod Legati Lacedæmoniorum Athenis in carcerem coniecti sunt; quasi tumultum excitassent. Secundò, quod Pelopidas cum Thessaliam in potestatem Thebanorum redigere cuperet, & legationis jure se tutum arbitraretur, quod apud omnes Gentes Legati nomen sanctum esse consueffet, à Tyranno Alexandro Pheræo simul cum Ismenio comprehensus in vincula coniectus sit. Tertiò, quod cum Legati Romanorum provincias, ut à Maximino deficerent, sollicitarent; Provinciales aliquot quosdam eorum è medio sustulerunt, alios ad Maximinum remiserunt, qui ad unum omnes interemit. Quartò, cum Episcopus Rossensis Legatus Reginæ Scotorum multa turbulenter in Angliâ fecisset ad rebellionem excitandam; & ad Anglos in Belgio profugas ad Angliam

and brought back with them, to Rome; where, with the Approbation of the People, he was publickly Whipt and thrown headlong from the Rock. Secondly, The Duke of Milan punished one de Morveilles a Minister of Francis I. King of France, who pretended he came about his own Business, but was in reality a Spy, and sent for that purpose.

Thirdly, Examples for punishing such as contrive the Destruction of the Prince, or the People, he is sent to. First, The Lacedæmonian Ambassadors were imprison'd at Athens for raising a Tumult. Secondly, Pelopidas being very desirous to bring Thessaly under the Theban Power, and thinking himself safe by the Rights of Ambassy, since the Character of an Ambassador had always been sacred in all Nations, was seized together with Ismenius by Alexander Pheræus and thrown into Prison. Thirdly, When the Roman Ambassadors urged the Provinces to revolt from Maximin; some of the Provincials destroyed Part, and sent the rest of the Ambassadors to Maximin, who slew them all to a Man. Fourthly, The Bishop of Ross Ambassador from the Queen of Scots, having acted very seditiously in order to promote a Rebellion in England, and to perswade the English Refugees in the Low-Countries to undertake an Invasion. The following Question was proposed to these eminent Civilians, viz.

gliam invadendam inducendos Davidi Lewiso Valentino Dalo, Gulielmo Dru-rio, Gulielmo Awbreio & Henrico Jones, Juris Cæsarei consultissimis, quæstio proposita fuit, an Legatus, qui Rebellionem contra Principem, ad quem Legatus est, concitat, Legati privilegiis gaudeat, & non ut Hostis pœnæ subjiçiat; eidem responderunt, ejusmodi Legatum Jure Gentium & Civili Romanorum omnibus Legati Privilegiis excidisse, & pœnæ subjiçendum. Quintò, quod Philippus Rex Hispaniæ, cum Venetorum Legatus Madridi contra justitiæ Ministros eorumq; Satellites publicâ Authoritate missos, familiam suam iis vim inferre instigavit, eos in judicium vocandos statuit, unde in alios sententia capitis, in alias suffigationis lata est, ut tamen plus Legationi, quam Legato tribueret paulo postea omnes supplicio exemit, & ad principes Christianos scripsit se nolle Legatos suos immunitate muneris justitiâ sanctiores esse, quin legibus regni conveniri & condemnari possint, si quando facinus quodpiam ab officio aut mandato sibi imposito alieno commisissent. Sextò, quod Henricus quartus, Rex Galliæ, Secretarium Legati Hispanici Ministrum suum corruptentem carcere incluserit, & Hispanico Legato conquerenti respon-

David Lewis, Valentine Dale, William Drury, William Awbrey and Henry Jones: *Whether an Ambassador that raises a Rebellion against the Prince he is sent to, has any Right to the Privileges of an Ambassadors, nor shall he be punished as an Enemy. They answer'd, that by the Law of Nations and the Roman Civil Law, such an Ambassador had forfeited all his Privileges, and was liable to Punishment. Fifthly, Philip King of Spain, when the Venetian Ambassador at Madrid had commanded and encouraged his Servants to beat the Ministers of Justice, and their Attendants, sent by publick Authority, order'd them all to be brought to Trial, where some were condemned to Die, others only to be bastinadoed. But to give more Honour to the Ambassy than to the Ambassadors, he soon after pardoned them all, and wrote Letters to the Christian Princes, that he would by no means have his Ambassadors be esteemed by Reason of their Office, to be more sacred than Justice it self; but that they might be summon'd and condemn'd by the Laws of the Kingdom, if at any time they had committed any thing Foreign to their Business or Instructions. Sixthly, Henry IV. King of France, imprison'd the Secretary of the Spanish Ambassador for endeavouring to Corrupt his Servant. And when the Ambassador complain'd, he gave him this Answer: You are in my Court, and your Secretary*

114 *De Legati delinquentis, &c.*

respondit, vos estis in aula mea, & vester Secretarius compertus est tractasse cum subdito meo, ut unum de præcipuis regni mei Oppidis proderet contra fidem & Officium ejus, qui Legati personam sustinet. Ubinam Gentium didicistis, Legatos & eorum ministros potestatem habere machinandi contra statum & dignitatem principis, apud quem Legationem obeunt?

Quartò, Quod Legatus contra subditos delinquens poenâ affectus sit, facit primò quod Megabyzi, Persarum regis Legati, quod scæminas mensæ adhibitas liberius tractassent, in Amyntæ Macedonum principis coenaculo interfecti sunt. Secundò, quod Legatus in Lusitaniâ ob adulteria condemnatus sit ductusque ad extremam capitis poenam.

C A P U T. VII.

De observationibus de Exemplis contra Legati immunitatem.

HUGO Grotius, immunitas Legatorum, inquit, ex solis exemplis evinci non potest; extant enim satis multa exempla
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is known to have treated with my Subject to deliver up one of the best Towns of my Kingdom, contrary to the Faith and Duty of him that bears the Character of an Ambassador. Where have you learnt that Ambassadors and their Servants, are at Liberty to plot against the State and Dignity of the Prince, with whom they reside?

Fourthly, Examples of Ambassadors punished for Faults against private Subjects. First, The Ambassadors of the King of Persia were killed in a Chamber of Amyntas King of the Macedonians, for being Rude to some Women at Table. Secondly, An Ambassador in Portugal was condemned for Adultery and put to Death.

C H A P. VII.

Observations upon the Examples alleged against the immunity of Ambassadors.

HUGO Grotius says the immunity of Ambassadors cannot be clear'd from Examples, because there is Instances enough to be produced

116 *De Legati delinquentis, &c.*

in utramque partem ; & alibi Historiæ, inquit, non tantum quæ juste, sed & quæ iniquè iracundè impotenter facta sunt, memorant.

De iis quæ primo loco afferuntur observare licet, primò de Legatis Augusti ab Antonio violatis. Quod, uti Gentilis affirmat, in civilibus dissentionibus Legationes sunt admodum periculosæ. Nam Legati Senatus Vitellique à Flavianis violati, & Vitellius ipse idem cum aliis fecit. Item missi ad legiones Germanicas vix apud Deum altaria servati sunt. Violati ab Adversariis ii, quos Sylla misit, & alius Marii Legatus à Syllanis trucidatus est, & Antonius ab Augusto missum flagris cæsit. Sic scilicet per summam rabiem res agitur in bellis civilibus. Nam cum utraque pars ad se rapiat titulum civitatis & adversarios censeat Patriæ hostes, hoc prætextu jus in Legatos saviendi tanquam in subditos & rebelles assumere solet. Secundò, quoad Legatos Persicos ab Alexandro Severo malè tractatos, res sic se habuit. Alexander Severus cum intellexisset Artaxerxem, Romani imperii ditiones in Asia invasisse, primò Legatos cum literis misit, eique suadet ne vana spes ingens excitet bellum, quibus contemptis cum exercitu Antiochiam proficiscitur, ibi iterum

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duced on both sides. And again he observes, the Histories relate not only just Actions, but also unreasonable, revengeful and extravagant Actions.

We may observe upon the first Examples. First, About the Ambassadors of Augustus that were killed by Anthony. That, as Gentilis affirms, Ambassies are very dangerous in Civil Wars. For the Ambassadors of Vitellius and the Senate were abused by the Flavians: And Vitellius himself practised the same thing against others. The Ambassadors that were sent to the German Legions were hardly safe at their holy Altars. Sylla's Ambassadors were injur'd by the opposite Party, and an Ambassador of Marius was killed by the Faction of Sylla. And Anthony scourged him that was sent by Augustus. Thus we see in Civil Wars Affairs are managed with the utmost Rage. Because when either Party engrosses the Title of the State, and thinks the opposite Party Enemies to their Country, they generally Claim a Right to reek their Malice on Ambassadors, as if they were Rebellious Subjects. Secondly, The Case of the Persian Ambassador ill us'd by Severus is this. When Alexander Severus heard that Artaxerxes had invaded the Roman Dominions in Asia, he sent Ambassadors with Letters to dissuade him from raising a vast War upon a vain Prospect. But finding these were slight-

ad Persarum regem Legationem mittit, quæ de pace amicitiaque cum illo ageret, Barbarus verò, inquit Herodianus, re infectâ Romanos Oratores domum remisit; ipse quadringenta è suis proceritate insignes, auroque exornatos, equisque atque Arcubus conspicuos Legatos ad Alexandrum mittit, perterritum iri Romanos putans aspectu illo cultuque Persarum. Legationis hæc erat Sententia, jubere magnum Regem Artaxerxem Romanos, eorumque Principem, Syria omni Asiâque decedere. Hæc afferentes Legatos quadraginta comprehendi Alexander jubet, omnique cultu adempto in Phrygiam relegat, vicis agrisque concessis quos colerent; contentus hoc supplicio interdicti in patriam reditus. Quippe occidere nefarium facinus & minimè virile arbitrabatur, neque in acie captos, & sui regis mandata exequutos. Paschalius, si non laudat at saltem excusat hoc factum; quid inquit ille ullusne regnantium, nedum Cæsar Romanus, & quidem Alexander Severus reperiri potuit animo tam demisso ut Legatos tam superba verba crepantes ferret. Gentilis verò profitetur se non probare & videtur ipsum Imperatorem censuisse, etsi insigni provocatione eo processerit, libertatem Legatorum ea quæ in

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slighted, he Marches to Antioch with an Army, from whence he sends a Second Ambassy to the Persian King, with Instructions for a Treaty of Peace and Amity. But the Barbarians, says Herodian, sent back the Romans without any Answer; and choosing Forty of his own Soldiers of remarkable Stature, adorn'd with Gold, and furnished with admirable Horses and Bows, he sent them Ambassadors to Alexander, supposing the Romans would be terrified at the Sight and Bravery of those Persians. The purport of the Ambassy was, that the Great King Artaxerxes commands the Romans to quit all Syria and Asia. Alexander orders the Forty Ambassadors that were bringing this Message to be seized and stripped of all their Finery, and transported to Phrygia, where Houses and Lands were assign'd them to Till, thinking this was Punishment enough to forbid their return to their own Country. For to kill them he look'd upon as an horrid Crime, and beneath the Dignity of a Man. Seeing they were not Prisoners of War, and had only executed their Kings Commands. Paschalius, if he does not commend, excuses this Action at least. Could any King, says he, much less a Roman Emperor, and especially Alexander Severus be found of so low a Spirit as to bear such insolent Language from Ambassadors? However, Gentilis disapproves it, and believes the Emperor himself thought,

mandatis habent exponendi, iis capitale esse non debere. Tertiò, quod Theodatus ad Justiniani Legatum dixit, H. Grotius omnino sine causâ probatum censet, quod Petrus prudenter responderit. Quia si Legatus ea dixerit, quæ audit à principe, qui ipsum misit, si non sint commoda, non ipse culpam præstare debet, sed qui eum misit: Quippe ipsi nihil aliud est commissum, quàm ministerio mandato fungi. Quartò, Volaterranus, qui Emanuelis Imperatoris factum narrat, ait eum Dandalum Legatum contra jus Gentium oculis orbasse.

De Exemplis quæ secundo loco proponuntur observare licet, Primò quoad Phileam Tarentinum à Romanis supplicio affectum, quod etsi Paschalius & alii, qui eum sequuntur, ita rem referant, Livius quem Authorem adhibent nihil tale de Philea Tarentino commemorat. Is enim ita tradit, cùm obsides custodiâ eduxisset ipse Comes itineris factus una profugit, & vulgatâ per urbem famâ emissi qui sequerentur; à Tarracinâ comprehensos omnes retraxerunt, qui deducti in Comitium virgisque cæsi de saxo dejiciuntur. Quod de obsidibus omnibus intelligi potest, & de obsidibus tantum Gentilis intelligit, qui quid Legato acciderit Livius, inquit, non expli-

thought, tho' upon that signal Affront he carried his Resentments so far, yet that the Liberty the Ambassadors took in delivering their Message was not to be punished with Death. Thirdly, Grotius thinks the Words of Theodatus utterly unreasonable, and that Peter answer'd well. Because, if an Ambassador speaks the Words of his Principal, tho' never so improper; not he, but his Principal ought to make amends for the Fault, since the Ambassadors has nothing to do but to obey his Instructions. Fourthly, Volaterran, who relates the Action of the Emperoy Immanuel says, Dandalus lost his Eyes contrary to the Law of Nations.

Observations upon the Second Kind of Examples. First, As to Phileas the Tarentine who was put to Death by the Romans, tho' Paschalius and others from him, relate this matter as before; yet Livy, whom they quote, says no such thing of Phileas. For his Account is thus. When he had convey'd them out of Custody he fled away with them; but the report of their escape being spread about the City, Messengers were dispatched to pursue them, who overtook and brought them all from Tarracina to Rome, where being publicly Whipt they were thrown headlong from the Rock. This may be understood of all the Hostages; and Gentilis thinks the Hostages are meant by it, Livy taking no notice of the Ambassadors For-

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tune.

explicat, Polybius verò in selectis narrat, eum Legatum, qui obsides abduxit non graviolem pœnam sustinuisse, quàm quod intra quinque dies discedere iussus sit. Ex quo colligere licet, quòd cùm eadem vel potius gravior Legati, quàm obsidum culpa fuerit, non tamen eadem pœna utrisq; sit imposita, ex eo contigisse quod Romanis jure Gentium in obsides saviendi jus erat, in Legatum non erat; & Paschalius, qui eum eadem pœnâ affectum narrat, eò refert quòd Tarentini tunc temporis in Romanâ ditione habebantur; & eâ ratione Phileæ eorum subdito jus Legati non debebatur. Secundò de Morveillero à Duce Mediolanensi morte affecto, refert etiam Thuanus, quòd is natione Mediolanensis fuit; quantâ verò cum Justitiâ & integritate Dux Mediolanensis in eum puniendo processerit, Montaignius in speciminibus docet, qui ita refert, quod Franciscus primus postquam potentiâ, quam in Italia habuerat, excidisset, ad amicos ibi retinendos, nobilem quandam Merveillerum Mediolanensem, qui ex suâ familiâ fuerat, ad Franciscum Sforzam Ducem cum literis Credentiæ & Mandatis quasi Legatum misit, & insuper eundem quasi negotia propria procurantem commendavit. Qui cum aliquandiu Mediolani moratus

time. But Polybius says, he underwent no heavier Punishment than being commanded to be gone within Five Days. Whence we conclude that the Reason, why the Ambassador was not punished as severely as the Hostages, when his Crime was as bad or rather worse, was because the Romans by the Law of Nations were allow'd to take Vengeance on the Hostages, but might not do so on the Ambassador. Paschalius, who believes he suffer'd the same Punishment, says it was, because the Tarentines at that time were under the Roman Government, and therefore Phileas being their Subject had no Right to the Privileges of an Ambassador. Secondly, As to Merveille executed by the Duke of Milan, Thuanus says he was a Milaneſe, but the Justice and Integrity of the Dukes Proceedings, when he put him to Death, may be seen in Montaigne's Essays; where we have the following Relation. Francis I. having lost the Power he had once in Italy, in order still to secure some Friends in his Interest, sent one Merveille a Gentleman of Milan, but a Servant of the King, to Francis Sforza the Duke of Milan, giving him Credentials and Instructions, as his Ambassador, together with Letters of Recommendation, as if he went thither only to manage his own private Concerns. This Gentleman having resided at Milan for some time, the Emperor be-

ratus esset, Imperator de eo suspicionem concepit, quæ causa fuisse dicebatur, cur prætextu homicidii ab eo commissi, ejus caput nocte amputatum fuerit. De quo cum Rex Galliæ querelam ad Principes Europæ exposuisset, Dux Mediolanensis Franciscum Tavernam hominem Eloquentiæ singularis ad Regem delegavit, qui admissus, post commemorationem officiosæ Ducis erga Regem observantiæ, protestatus est, quod Merveillerus se pro nobili privato gessit, nec Duci aut cuiquam alii ut Minister Regis innotuit, multò minùs pro Legato aut Agente ejus habitus fuit. Rex verò, cum multa in contrarium disse-ruisset, tandem rogavit, quare nocturno tempore & clandestino more supplicio affectus esset? cui Taverna (se rei rationem speciosam redditurum putans) respondit, quod Dux Mediolanensis pro summo erga Regis Majestatem studio consultius duxit de nocte, quàm de die de eo supplicium sumere.

De Exemplis tertio loco. Primò, quoad Legatos Lacedæmoniorum, qui in carcerem coniecti sunt, ita Xenophon refert. Thebani, ut Atheniensium cum Lacedæmoniis inimicitias excitarent, Sphodriam, qui Lacedæmoniorum præsidio præfuit, pecu-

gan to mistrust his Business, and for this Reason, as it is generally reported, under the pretence of a Murther by him committed, he was beheaded in the Night. The King of France having complain'd of this Action to all the Princes of Europe, the Duke of Milan sent Francis Taverna a Person of singular Eloquence, Ambassador to the King; who, being admitted to an Audience, after a long Declaration of the Dukes Service and Respects for the King, he solemnly affirmed, that Merveille took upon him no other Character than that of a private Gentleman, that neither the Duke, nor any one else knew of his being the King's Servant, much less did they take him for an Ambassador or a Resident. But the King having made several Objections, demanded at last the Reason, why Merveille was executed by Night, and in that clandestine manner? For which Taverna intending no doubt to give a very plausible Reason, made this Answer, that the Duke of Milan out of the highest regard to his Royal Majesty, thought it much better to execute him by Night than by Day.

Observations on the Examples alledged under the Third Head. Zenophon gives this Relation, of the Occasion of the Imprisonment of the Lacedæmonian Ambassadors. The Thebans to make the Athenians and Lacedæmonians quarrel, bribed Sphodrias the Lacedæmonian

pecuniis corrumpebant, ut Atticam cum copiis invaderet. Is Piræum se capere velle simulatus, summo mane milites educabat; mox cum pecora nonnulla diripuisset, & domos aliquas spoliaisset, revertebatur. Nonnulli ex iis in quos inciderat in urbem fugientes Atheniensibus nunciabant magnas copias accedere. Fortè tunc Lacedæmoniorum Legati apud Calliam Hospitem publicum civitatis suæ aderant; eos Athenienses, hâc re nunciatâ custodiebant, quasi & ipsi cum aliis insidiati essent. At illi ostendebant se non ita fatuos fuisse, ut si præscivissent Piræum capiendum fore apud hospitem civitatis suæ publicum in potestatem Atheniensium se tradidissent. Itaque ejus facinoris minimè conscii judicati dimissi sunt. Ex quibus, an hi Legati ad Athenienses missi sunt, non satis constat, probabilius videtur ad alios destinatos & ibi in itinere repertos; & quod occasione repentinâ in custodia detinerentur, id ad præcavendum imminens periculum, quod Grotius probat, factum interpretari licet. Secundò de Pelopidâ, idem probat Grotius, quod justè in vincula ab Alexandro Phæreo conjectus sit, quod Legatus cum esset, Thessalos ad libertatem suam vindicandam concitârat. (Prout Romani Legatos Tarquiniorum
compre-

Governor, to invade Affrica with his Forces. He pretending a Design against the Piræum, marched very early in the Morning with his Enemy, and having taken a few Sheep and plunder'd a few Houses, return'd. Some, that had met him running back to the City, brought Word to the Athenians, that a great Army was advancing against them. Lacedæmonian Ambassadors were then accidentally in the House of Callias their publick Host. The Athenians, upon this News, secured these, as Accomplices of the Design against them. But they told them plainly, that if they had been privy to a Design to surprize the Piræum, they would not have been so senseless as to suffer themselves to be taken by the Athenians in a publick Inn. Upon this they were pronounced Innocent and dismissed. From these things it does not appear, whether these Ambassadors were sent to the Athenians or no. 'Tis more probable they were design'd elsewhere, and found here on their Journey: And their being taken into Custody upon this emergence was, we may suppose, to provide against an eminent Danger, which Grotius allows to be Lawful? He likewise approves, what was done to Pelopidas, who was imprison'd by Alexander Pheræus, because when he was Ambassador, he had encouraged the Theſſalonians to assert their Liberty. [As the Romans secured the Ambassadors

comprehenderunt) nihil durius cum eo actum videtur, quod postea ab Epaminondâ in libertatem restitutus sit. Tertiò, Legati Romanorum, à Provincialibus & Maximino interfecti, cives Romani & subditi erant Imperatoris Maximini, & proinde cum provinciis jus Legationis nequaquam habuerunt, nec immeritò, cum eas ad defectionem sollicitarent, ab imperatore suo interfici potuerunt. Quartò, Quod Occasione Episcopi Rossensis Juris Casarei consulti Anglicani responderunt, quantum ponderis habere debeat, tunc discutietur, cum aliorum Opiniones & Argumenta de eâ re, expendentur. Interim ex Historiâ observandam, quod cum ex his Juris prudentium responsis Rossensiâ consiliariis denunciatum fuit illum non amplius pro Legato habendum, sed ut perniciosè meritum malè mulctandum. Ille respondit se Legatum esse absolutæ Reginæ & injustè abdicatæ, in Angliam ex fide publicâ, quum exhibuerat, cum amplissimâ Legati Autoritate advenisse, & sacra Legatorum jura nullo modo esse violanda. Et cum Burghleius diceret, nec jura Legationis, nec literas fidei publicæ posse patrocinari Legatis, qui in publicam peccant Majestatem, sed eos pœnalibus Actionibus teneri; ille contrâ pertinax contendit, ju-
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dors of the Tarquins.) He seems to have met with no worse Usage, afterwards set at Liberty by Epaminondas. Thirdly, The Ambassadors kill'd by the Provincials and Maximin were Maximin's Subjects, and so had no Right to undertake any Ambassy to the Provinces; might deservedly be put to Death for soliciting a Revolt. Fourthly, when we come to examine the Opinions and Arguments of others, we will consider the Weight of the Answer of the English Civilians upon the Bishop of Ross's Account; in the mean time we may observe from History, that, when agreeable to these Lawyers Answers, he received a Declaration from the Council-board, that he must no longer be treated as an Ambassador, but be punished as a Malefactor; he answer'd, that he was the Ambassador of a Queen, who was independent, tho' unjustly dethroned; that he came with the full Power of an Ambassador into England upon the publick Faith; and that the sacred Rights of Ambassadors ought in no wise to be violated. And when Burghley told him, that neither the Privileges of Ambassage, nor the Testimonials of the publick Faith, could protect such Ambassadors as were Traitors to the Publick, but they were Subject in criminal Cases; he resolutely maintain'd, that the Rights of Ambassage had never been violated by way of Right, but only by way of Fact, and smartly advised them, to
give

ra Legationum nunquam viâ Juris sed viâ facti fuisse violata; & falsè monuit ut non asperius secum agatur, quàm cum Legatis Anglicis Throgmortono in Galliâ, Randolpho & Tamwortho in Scotiâ, qui Rebelliones excitârunt, nec aliquid gravius passi sunt, quàm jussi ut intra statos dies discederent. Nec aliud cum Rossensi actum, quàm quod in carcerem Londinensem deductus, arctè custoditus sit & tandem post biennium è custodiâ liberatus ex Angliâ exire jussus sit. Nec consilarii Reginae Angliæ eorum juris consultorum opinionibus satis confisi videbantur, quod postea in casu non dissimili, de Mendoza Legato Hispanico Johannem Hotomannum in Galliâ, & Albericum Gentilem Italium in Angliâ consulebant, qui Legatum conjurationis reum nequaquam morte plectendum; sed ille Regem Hispaniæ consulendum, alter Legatum dimittendum censuerunt. Quintò, Quod de Philippo Secundo & Venetorum Legato Marsellaer ex auditu refert, plus ponderis habuisse videbatur, quod ex eo suspicari licet, Regem, non minus Legatum, quàm ejus famulos, qui Ministris publicis vim intulerunt in judicium vocari, & ad supplicia publica condemnare voluisse. Et mirum videbatur quod prudentissimus Rex secus
cum

give him no harsher Treatments than the English Ambassadors had met with abroad, viz. Throgmorton in France, Randolph and Tamworth in Scotland, who had all raised Rebellions, but suffer'd no severer Punishment, than being order'd to leave the Kingdom within the time appointed. And nothing more was done to the Bishop of Ross, than that being sent to the Tower, he was confin'd there close Prisoner for Two Years, and then order'd to leave the Kingdom. Besides, the Queens Council seem to have laid but little stress upon the Opinions of these Lawyers, since afterwards, in a case of the like Nature, they consulted Hotoman in France, and Gentilis an Italian then in England, about Mendoza the Spanish Ambassador, who both agreed, that an Ambassador, tho' a Conspirator, must not be put to Death, but his Principal was to be consulted, according to the former, and himself be sent away, according to the latter. Fifthly, The Story of Marsellaer about Philip II. and the Venetian Ambassador seemed to carry more weight in it, since there was room to think, the King intended to try and condemn to publick Punishments the Ambassador himself as well as his Servants, for assaulting the Ministers of Justice. And yet it was something strange, that so Politick a King should take greater Liberty in proceeding against the Ambassadors of others, than he had

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cum aliorum Legatis procederet, quàm quâ libertate suos tractandos aliquoties declaraverit. Nam in consimili casu * idem Rex Philippus valde indignabatur Episcopum Aquilanum, ipsius in Angliâ Legatum, quod Italum, qui in alterum bombardulam disploserat in ædes fugientem admiserat, & clam emiserat, ipso inconsulto domo conclusum & interrogationibus subditum fuisse: Cumq; Waadus ex Angliâ ad eum missus erat ut doceret quàm malè Mendoza, qui regno exire jubebatur, in Legationis munere se gesserat; simulq, significaret Reginam Elizabetham, ne hunc relegando antiquæ inter regna Amicitix renunciare videretur, si quem alium Amicitix conservandæ studiosum legaret, omnia humanitatis officia se ipsi præstituram; Ignominiosam Legati sui dimissionem tam graviter tulit, ut Waadum alloquio non dignaretur, sed inauditum domum redire pateretur.

Sed tandem in Libellum incidimus, in quo quid in eo Venetorum negotio gestum sit plenius & accuratius recensetur. Libellus inscribitur *Le parfait Ambassadeur, traduit de Espagnole en François par le Sieur*

* Camden. 1569.

allowed in several Declarations to be used against his own. For, in an instance of the like Nature, he was very Angry, that the Bishop of Avila his Ambassador in England, was confin'd in his own House, and examin'd without his leave, for harbouring an Italian, who had Shot a Man and fled thither for Refuge, and letting him privately Escape. For when Wade was sent to him from England, to acquaint him with Mendoza's Misdemeanor, for which he was order'd to leave the Kingdom; and to let him know, that Queen Elizabeth did not design by remitting this Ambassador to dissolve the Antient Friendship between the Kingdoms, but was ready to secure all the Offices of Humanity to any other Person he should think fit to send, that would take Care to preserve their mutual Amity; he took the ignominious Dismissal of his Ambassador so Ill, that he would not vouchsafe to admit Wade to his Presence, but let him return without giving him an Audience.

I have at last met with a Book, giving a full and accurate Relation of this whole Venetian Business. The Title of the Book is *Le parfait Ambassadeur, traduit de Espagnole en françois par le sieur Lancelot, imprimé à Paris, 1642.* which is as follows. The Marshal or Offices of Justice at Madrid, had engaged to Arrest and carry to Prison one that had

Lancelot imprimè à Paris 1642. in quo sic habetur. Madriti Mareschallus sive Minister justitiæ ad instantiam alicujus partis in se susceperat quendam, qui ad domum Legati Signoriæ Venetæ confugisset, apprehendere & captum abducere. Eum cum juxta portam occurstantem Legatus è fenestrâ conspexisset, monuit ut domum introiret ; quod cum ille fecisset incidit in dominum Hospitii, qui erat nobilis Venetus, Badoarus nominatus ; qui cum aliis ad Hospitium pertinentibus hominem circumvenerunt, & baculum insigne officii fregerunt, eumque multis injuriis & contumeliis affecerunt. Is, cum ex eorum manibus & potestate evasisset, coram præfide Castiliæ de injuriis & contumeliis questus est. Præses Præpositis Civitatis mandatum dedit ut de hoc facto & aliis enormibus in Legati domo perpetratis inquirerent, & contra delinquentes processum judicarium instituerent. Informatione super inquisitione habitâ Præpositi decreverunt ministros justitiæ amandandos, qui delinquentes deprehenderent ; sed certiores facti, quòd aliqui essent penes Legatum, qui eorum conatibus resisterent, ad præcavendum periculum quod de verisimili erat eventurum, Præpositi ipsi ad domum Legati progressi sunt, quo cum pervenis-
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taken Sanctuary in the Venetian Ambassadors House. The Ambassador from his Window, espying the Bailiff wait at his Gate, bid him come in, who, doing as he was bid, met with the Master of the House, a Noble Venetian Badoare by Name, by whom and others of the Family that came about him, and broke the Staff of his Office, he was shamefully abused. But escaping out of their Hands, he complain'd to the Governor of the Castile, of the Injuries and Insults he had suffer'd. The Governor order'd the Judges to examine and try this and other Irregularities committed in the Ambassadors House. Accordingly an Indictment being founded upon their Inquest, the Judges issued a Decree to the Officers of Justice to seize the Delinquents. But upon notice that Resistance would be made by some of the Ambassadors Dependents, the Judges themselves to prevent any further Mischief, went to the Ambassadors House, where they found the Doors shut, and the Windows throng'd with Servants in a threatening Posture; but having taken a great deal of Pains to pacify them, at last they went in and met the Ambassador in the Court, stripped with a Spear in one Hand and a Shield in the other. This Warlike Preparation, they thought unsuitable to the Character of an Ambassador, but his Words were answerable to his looks. However, the Judges were Men of more Temper

sent, invenerunt foras conclusas, & fenestras famulorum plenas, qui vim & tumultum minitabantur. Præpositi eorum indignationem lenire satagebant, & tandem domum introierunt; ubi in atrio Legatum sine togâ aut pallio, alterâ manu hastam, alterâ clypeum gestantem, offenderunt. Iisque ejusmodi apparatus Legati personæ minimè convenire videbatur. Ille etiam iracundè satis eos allocutus est; Præpositi verò ad moderationem propensiores illum facilè in domum vicinam deduxerunt, dum eorum Ministri delinquentes comprehenderent, in quorum numero Badoarus præcipuè fuit. Hoc peracto, Legatum cum debitâ observantiâ in domum suam reduxerunt, & ipsi satellitum præsidium constituerunt, nullatenus ad ipsum cohibendum, sed ad impetum populi, qui in eum concitatus fuit, prohibendum. De his rebus Legatus gravem querelam instituit, cum protestatione in suâ personâ dignitatem Reipublicæ læsam, & Legati privilegium violatum esse; innuens præterea quòd relatio, quam Præpositi fecissent, falsa fuisset, & iniqua. Quocirca Rex Consiliariis suis supremis præcepit, quòd nova inquisitio & informatio à personis neutiquam suspectis institueretur; quæ cum habita fuisset, parum differentię in re aliquâ

and easily perswaded him to go to a Neighbouring House, while their Officers seized the Offenders, and amongst the rest Badoare the Chief. When this was done, they conducted the Ambassador with due Respect back to his House, and appointed him a Guard, not to confine him, but to keep off the Fury of the Mob, that was raised against him. The Ambassador complain'd grievously of these Proceedings, setting forth in a Declaration that the Honour of the State was injur'd, and the Rights of an Ambassador violated in his Person; concluding with Hints, that the Report of the Judges was false and partial. Upon which, the King commanded his Counsellors to give Directions to have the Cause tried again by unprejudiced Persons; which was accordingly done, and no material Difference discern'd. The King then order'd the whole Process to be drawn up in writing, expressing both the Nature of the Offence and the Dignity of an Ambassador, and to be transmitted to Don Ignigo de Mendoza his Ambassador at Venice, that the Republick might be fully apprized of the Truth of the Case, and how far all but the Ambassador himself had been proceeded against; Badoare the Host and Relation of the Ambassador being condemn'd to loose his Head, some of the Servants to be hang'd, others to be whipped, and others to be sent to the Gallows. But upon the Bailiff surceasing

138 *De Legati delinquentis, &c.*

quâ substantiali compertum est. Postea habitâ consideratione qualitatis delicti, & dignitatis Legati, Rex præcepit processum Madriti habitum ad Dominum Ignigo de Mendoza Legatum suum Venetiis agentem transmittendum : ut Reipublicæ de veritate ejus, quod factum fuisset, constare possit, & quantum ad alios, præterquam Legatum, Præpositi processus contra eos peregerunt, in quibus sententiæ latæ ut Badoarus hospes & cognatus Legati capite plecteretur, alii ex servientibus suspenderentur, alii flagellis castigarentur, alii ad triremes mitterentur. Sed mareschallo seu ministro justitiæ à prosecutione ulteriori cessante, Rex præcepit ne sententiæ executioni mandarentur, sed quòd delinquentes tantum regno excederent, & porro ad Rempublicam Venetorum & Principes Christianos declarationem emisit, &c. prout Marsellaer refert. Ex quibus relationibus observare licet, primò, quòd quamvis Legatus Mareschallum suadendo in domum introire, quasi in insidias deduxerat, & cùm armatus in atrio apparet se ad resistendum Magistratibus paratum ostenderet, Magistratus autem, Præpositi scilicet, ipsum humaniter tractaverunt, & Rex de eo judicium ad Venetorum Senatum permisit. Secundò, quòd
Bado-

his Prosecution, the King stop't the Execution, and only banish'd the Criminals, sending afterwards that Manifesto to Venice and the Princes of Christend^m, which Marsellaer mentions. From these Accounts, we may make the following Observations upon this Accident. First, That altho' the Ambassador by perswading the Bailiff to go into his House, had in a manner betray'd him into a Snare laid for him; and altho' by appearing Armed in his Court, he shew'd himself ready to resist the Magistrates; yet the Judges used him with Respect, and the King left him to the Judgment of the Venetians. Secondly, Tho' Badoare, the Ambassadors Host, was a Venetian Born, yet by living at Madrid, both himself and his Servants were Subject to the King of Spain; and as far as appears from the Story, they were the only Persons that had abus'd the Bailiff, and probably they only were try'd and condemn'd. And tho' the Ambassador might think himself insulted by this Violence used in his Lodgings, yet the Injury to him was much less then it would have been, had his own Servants been thus forcibly brought to Justice and condemn'd. Thirdly, Since the Prosecution was drop'd by the Bailiff, and the King stop'd the Execution, 'tis probable, the King thought it fairer and more agreeable to the Law of Nations only to banish them, whereas for a Crime of a less heinous

Badoarus, in cujus domo Legatus hospita-
 batur, etsi origine civis Venetus esset, Ma-
 driti tamen habitans cum ejus familiâ ra-
 tione domicilii Regis Hispaniæ subditi e-
 rant, à quibus solis (quantum ex relatione
 constat) Mareschallus malè tractatus fuit,
 & verisimile est eos solos ad judicium con-
 quisitos & condemnatos esse. Quòd etsi
 Legatus, cùm in ejus hospitio vis ipsis in-
 ferretur, ad suam injuriam spectare exi-
 stimare potuerit, minùs tamen erat quàm
 si suis comitibus, aut servis propriis vis il-
 lata, & contra eos sententiæ illatæ fuissent.
 Tertiò, quòd ubi perhibetur, Mareschal-
 lo à prosecutione cessante, Regem præce-
 pisse ne sententiæ executioni mandarentur,
 forsitan probabilius est, cùm ob crimen
 non adeo magnæ atrocitatis pœnæ tam gra-
 ves à judicibus irrogatæ essent, Regi æ-
 quius & juri gentium magis consentaneum
 visum esse, eos tantùm regnum jubere ex-
 cedere. Quintò, Quòd Rex ad Principes
 Christianos scripserit se velle & cupere ut
 Legati sui in locis, ubi delinquant, judi-
 ciis subjiciantur, supervacuum fuisset; si
 idem de jure Gentium obtineret. Certè
 non indecorum fuit, cùm magistratibus
 suis contra Reipublicæ Venetæ Legatum
 eo modo procedere permisisset, idem cum
 suis Legatis se passurum profiteri, cùm
 sum-

heinous Nature, Penalties as severe would have been inflicted on others. Fifthly, Whereas the King wrote to the Christian Princes to let them know it was his desire, to have his Ambassadors Subject to the Jurisdiction of those Courts where they should Offend, this would have been a needless Trouble, if it had been established by the Law of Nations. But it was no other than good manners, to express his readiness to allow his own Ambassadors to be used in the same manner, that he had authorized his Judge, to proceed against the Venerian Ambassador. Since, according to Ulpian, 'tis the highest Reason that one Man should be judged by the same Law, by which he has judged another.

But

summam æquitatem habeat, inquit Ulpianus, nec quis aspernari debeat, idem jus sibi dici, quod ipse aliis dixit vel dici effecit.

Sed quod ipsi placuit, Principibus aliis placere non necesse est. Num ejus Legatis placitum sit ipsi viderint. Sextò, De Secretario Legati Hispanici quod à Rege Galliæ actum est, considerandum quòd non ad Legatum sed ad ejus Ministrum pertinerit, nec de eo quicquam aliud apparet, quàm quod probat Grotius, quòd carcere inclusus detinebatur, ne proditio, quam machinabatur, effectum sortiretur.

De exemplis quarto loco, utpote primò de Legatis Megabyzi ab Amyntâ interfectis quamvis Paschalius probet, quòd Macedonum Princeps ferre non debuit Legatos in patriam reversos gloriari potuisse regias scæminas ab se contrectatas fuisse, nec æquum visum esse tantam sceditatem cum Legationis jure obumbratam iii; Kirchnerus tamen, quem & Besoldus sequitur, factum vituperat, quòd Persæ solebant in suis conviviis liberiùs cum scæminis versari, & quamvis ait Macedonicis legibus, quod tamen non erat, capitale fuisset scæminam licentiùs amplecti, illis tamen legibus & moribus Persarum Legatos judicandos non fuisse, & Regem, qui eas

But this pleased him, other Princes were not obliged to follow the same Example. Let his Ambassadors consider, whether they like it or no. Sixthly, In the King of France's dealing with the Spanish Ambassadors Secretary, it is to be consider'd, that this has no Relation to the Ambassador himself, but only to his Servant; and that as far as appears, he was, as Grotius allows, only imprison'd, that the intended Treason might be disappointed.

Observations upon the Examples of the Fourth Head. First, Paschalius approves of Amyntas's killing the Ambassadors of Megabyzus, because a Macedonian Prince, ought not to have given the Ambassadors an Opportunity of boasting, when they had got into their own Country, how Familiar they had been with the King's Ladies; nor was it reasonable, to cover so great a Disgrace with the Rights of Ambassy. But Kirchner and Besoldus find Fault with this Action, because it was Customary for Persians to be very Free with Ladies in their Entertainments, and supposing by the Macedonian Laws, that a licentious Embrace was a Capital Crime (tho' really it was not) yet the Persian Ambassadors were by no means to be judged

eas ad convivium adduxit, in culpâ fuisse, quòd earum existimationis melius non prospexerit. Secundò, de eo quod Kirchnerus narrat, Legatum in Lusitaniâ ob adulteria condemnatum auctorem adhibet Warsevicium Polonum, qui in oratione de Legatis nihil aliud refert quàm quod famâ vulgatum esset, quendam Legatum ob nefaria crimina ostensa, ex ipsius Legis necessitate Lusitanos exussisse; quæ verba quid significant non satis est clarum, & probabile & Warsevicium de re ex longinquo petitâ famâ publicâ deceptum fuisse, & illud fuisse, quod narrat Hottomannus, Tunetenses, scilicet Magistratus, Legati Hispanici ministrum domesticum per vim apprehendisse, & contra eum Judicarium processum instituisse, in quo Sodomix convictum secundùm leges suæ Patriæ vivum comburendum iudices pronuntiârunt suam sententiam executioni demandârunt, de quo multùm questus est Legatus Hispanicus, quòd in se, vel suos, Magistratus Tunetenses Jurisdictionem non habuerint, & quòd tale crimen in Hispaniâ nequaquam capitale fuerit.

judged by those Laws and Customs; and the King himself was to blame in bringing his Ladies to the Feast, and guarding their Honour no better. Secondly, Kirchner, for his Account of an Ambassador condemned in Portugal for Adultery, cites Warsevicius a Pole, who in his Speech about Ambassadors, mentions this Relation only from common Report. viz. That the Portuguese burnt an Ambassador for abominable Crimes proved against him, according to the Necessity of Law; the Signification of these Words is obscure, but 'tis probable, Warsevicius was deceived by the publick Report of a thing so distant, and that he means the same thing which Hotoman relates, viz. That the Magistrates of Tunis, apprehended and try'd a Servant of the Spanish Ambassador, and having convicted him of Sodomy according to the Laws of their Country, they condemned him to be Burnt alive, and the Sentence was executed upon him accordingly. Against which, the Spanish Ambassador made many Remonstrances, since the Magistrates of Tunis had no legal Power over him, nor his Servants, and that such a Crime was not Capital in Spain.

CAPUT VIII.

De Argumentis ex Jure Civili pro immunitate Legati.

QUòd Legatus delinquens in loco ubi Legationem obit, non sit puniendus arguitur etiam ex Jure civili. Utpote primò, ex *l. 8. D. de Divisione rerum*, ubi Marcianus, Sanctum est, inquit, quod ab injuriâ hominum defensum atque munitum est; Sanctum autem dicitur à Sagminibus herbis quas Legati populi Romani ferre solent ne quis eas violaret. Sicut Legati Græcorum ea ferunt, quæ vocantur *Cerycia*. Ex quo infertur, cum id, quod sanctum est, ab injuriâ hominum sit munitum, Legati, qui Sagmina præ se ferunt imprimis sancti & inviolabiles, sint muniti ab injuriâ sive læsione hominum quorumcunque, non solum hominum privatorum, à quorum injuriis personæ cujuscunque generis defendi debent, sed etiam à vi & coactione Magistratuum, qui alios coercendi potestatem habent.

Secundò, ex *l. ult. D. de Legationibus*, ubi Pomponius, si quis, inquit, Legatum hostium pulsasset contra jus Gentium id
com-

VIII.

immunity of Ambassadors.

IT is proved likewise from the Civil Law, that an Ambassador cannot be punish'd for a Fault in the Place where he resides. as first L. 8. D. de divisione rerum. Where Marcianus tells us, that is Sanctum which is defended and secured from the Injury of Men. The Word Sanctum is derived from Sagmina, those Herbs which the Roman Ambassadors carry with them, to preserve themselves from Injury. As the Grecian Ambassadors carry what they call Cerycia, to the same purpose. From whence we may infer, that since to be Sanctum is to be guarded against the Injury of Men, Ambassadors, by carrying the Sagmina being especially so and inviolable, are guarded against the injury and hurt of all Men, whether private, from whose Injuries all Persons ought to be secured, or publick; being exempt from that Power and Authority which Magistrates have a right to exercise over others.

Secondly, L. ult. D. de Legationibus, Pomponius says, 'tis contrary to the Law of Nations to strike an Ambassador, because Ambassadors

commissum existimatur. Quia sancti habentur Legati, & ideo si cum Legati apud nos essent gentis alicujus, bellum cum iisdem indictum sit, responsum est, eos liberos manere, id enim juri gentium conveniens est. Itaque eum qui Legatum pulsasset Q. Mutius dedi hostibus utilius esse respondit. Ex quibus inferitur, primò, quòd si Legatum hostium pulsare contra jus gentium sit, multò magis in Legatum amicorum & sociorum id non licet. Secundò, quòd etsi alii subditi, qui in pace pervenerunt ad alteros, si bellum subito exarserit, eorum servi efficiuntur, apud quos jam hostes deprehenduntur, uti tradit Tryphonius in *l. 12. D. de Captivis*, Legati tamen apud eos reperti, apud quos bellum exortum sit, jure gentium Libertatem suam retinent. Quod ostendit Legatorum conditionem meliorem, quàm aliorum subditorum esse; neque eos, prout alios peregrinos, subditos fieri. Tertiò, quòd utilius sit eum, qui Legatum pulsasset, iis, quorum est Legatio pro arbitrio puniendum, dedere; quàm de ipso, quod fortassis aliis non satisfaciet, supplicium sumere. Et æquum est ut Legatus, qui contra Principem, vel ejus subditos deliquit, eadem ratione iisdem puniendus dedatur, quia quod quisque juris contra
alium

assadors are all accounted Inviolable, and therefore it has been Decreed, that Ambassadors continue Free with us, tho', during their Residence, War be declared between us and their Principals, for that is agreeable to the Law of Nations. Q. Mutius therefore decreed, it was better to deliver up one, that had struck an Ambassador, to the Enemy. Hence 'tis infer'd. First, If it be contrary to the Law of Nations to strike the Ambassador of our Enemies, 'tis much more unlawful to strike the Ambassador of our Friends and Allies. Secondly, tho' other Subjects, who in time of Peace have removed to dwell with Foreigners, may upon the breaking out of War be made Slaves in the Country where now they are Enemies, as Tryphonius teaches L. 12. D. de Captivis, yet Ambassadors still retain their Liberty by the Law of Nations, tho' they be those, whom a New War has made their Enemies. Which shews, that Ambassadors are in a better Condition than their fellow Subjects, and cannot be subjected, as other Strangers may, to a Foreign Power. Thirdly, 'tis better to deliver up the Person, who has struck an Ambassador, to be punish'd by the Principal as he thinks fit, than to punish him at Home, which perhaps may not satisfy the Parties injured. And 'tis but Reason, for a Criminal Ambassador to be surrendered in the same manner to Justice, since every Man ought

aliud obtinet, eodem uti debet. *l. 1. D. Quod quisque juris.*

3. *L. 8. D. de vi publicâ* ; ubi Ulpianus *Lege Juliâ*, inquit, de vi publicâ tenetur, qui cum imperium potestatemve haberet, civem Romanum adversus provocationem verberaverit. Item quod ad Legatos, Oratores, Comitesve attinebit ; si quis eorum quem pulsâsse, sive injuriam ei fecisse arguetur, pœna Legis Juliæ de vi publicâ erat exilium. *l. 10. in fine D. eod.* Et ad hanc pœnam tenentur Magistratus, & Judices, non minùs, qui Legatos, Oratores, Comitesve pulsaverint, aut injuriâ affecerint, quàm qui civem post provocationem aut appellationem interpositam ad Imperatorem verberaverint, & pulsari intelligitur non solum cum alicujus corpori vis infertur, sed & cum quis in judicio molestiam patitur ; ita idem Ulpianus *D. de judiciis l. 12.* ei qui provocavit non imponitur necessitas intra tempus provocationis exercendæ aliis pulsantibus respondere ; nec ineptè, quia in judicium quis sine violentiâ aliquâ, ut putà injectione manuum, vel coërcione non trahitur, unde præter periculum deditiois, quæ est à jure gentium ; pœna exilii si à parte læsâ postuletur, ipsi etiam Magistratui qui Legatum in jus trahit, Jure Civili imponitur.

to be guided by the same Law which he enjoys against another.

3. L. 8. D. de vi publicâ ; Ulpian says, that whatever Magistrate shall scourge a Roman Citizen contrary to an Appeal ; and whoever shall be convicted of striking Ambassadors, or any of their Retinue, incurs the Penalty of the Julian Law de vi publicâ ; which Penalty is Banishment. l. 10. in fine D. eod. So that Magistrates and Judges for striking Ambassadors, or any of their Attendants, are as liable to this Penalty as they who have scourged a Citizen after his Appeal. And the Word Pulsare (to strike) is extended to signify, not only some external Violence done to the Body, but even the Trouble that is given in a Trial. According to Ulpian D. de Judiciis l. 2. the Appellant is not obliged to give in his Answer, if others beat him with in the time of his Appeal, and that, for good Reason. Because a Man is not forced to Judgment without some Violence, by laying Hands on him, suppose, binding him, &c. If then a Magistrate forces an Ambassador to Judgment, besides the danger of being given up to Punishment according to the Law of Nations, he incurs the Penalty of Banishment by the Civil Law, if the Party aggrieved insists upon it.

4. Ex l. 13. § 4. *D. ad Senatûs consultum Trebellianum*, ubi Ulpianus, Prætor, inquit, in Prætorem, vel Consul in Consulem nullum jus habet: Unde inferitur, quòd Legatus, qui personam Principis repræsentat, qui neminem superiorem agnoscit, perinde ac Princeps ipse à nemine judicari potest; quod ut in vulgari juris axiomate traditur, surrogatus loco surrogantis est habendus.

5. Ex l. 3. C. *ubi Senatores vel Clarissimi*, in quâ Imperatores, Viri Patritii, inquirunt, nullius alterius judicio, præterquam Imperatoris, subjiciantur. Et ex l. 6 C. *de jurisdictione omnium judicum*, ubi Imperatores magisteriæ potestati, inquirunt, inter militares viros audiendi facultas conceditur. Cùm constet militem reum, nisi à suo iudice nec exhiberi posse, nec, si in culpâ fuerit, coerceri. Et l. C. *de Officio Magistri militum*; Magistri militum in Provinciales nullam penitus potestatem habent, nec amplissima præfectura in militares viros. Ex quibus inferri potest, si ratione qualitatis personarum, etiam subditi è Jurisdictione ordinariâ Magistratuum eximantur, non esse necesse ut Legati aliorum Principum, Jurisdictioni loci in quo morantur, subjiciantur.

4. L. 13. § 4. D. ad Senatûs consultum Trebellianum, Ulpian says, one Prætor has no Power over another, nor one Consul over another. An Ambassador therefore, bearing the Character of a Prince that acknowledges no Superior, is as well as his Prince exempt from Jurisdiction, since according to the common Maxim in the Law, the Deputy must be accounted instead of his Principal.

5. L. 3. C. ubi Senatores vel Clarissimi, some of whom were Emperors; say, the Nobles are Subject to the Jurisdiction of none but the Emperor. And L. 6. C. de Jurisdictione omnium Judicum; the Emperors say, the Power of bearing Causes in the Army is granted to Military Judges, since a Soldier can neither be cited by any but his Proper Judge, nor punish'd when found Guilty. And again L. 1. C. de Officio Magistrî Militum; the Masters of the Soldiers have no Power over the Provincials, nor the largest Prefecture over the Soldiers. Wherefore, if Subjects themselves be exempt from the ordinary Jurisdiction of the Magistrates, upon account of their different Qualities, there is no Necessity for Ambassadors to be subject to the Jurisdiction of the Place, where they reside.

CAPUT IX.

*De Argumentis ex Jure Civili contra
Legati immunitatem.*

QUòd Legatus in loco, ubi deliquit, puniendus sit, sic arguitur.

Primò, ex *l. 51. D. ad L. Aquiliam*; ubi Julianus, impunita, inquit, maleficia esse non oportet. Et ex *l. 9. §. 5. D. de publicanis*; ubi Paulus, ut delinquentes puniantur vigor, inquit, publicæ disciplinæ postulat. Et ex *l. 14. C. de Pœnis*; ubi Imperatores, non remitti pœnam publicè interest, ne ad maleficia quisquam temerè profiliat. Itaque cùm reipublicæ intersit puniri delinquentes, ejus etiam interest Legatos delinquentes impunè non evadere.

Secundò, Ex *l. 3. D. de Officio Præsidis*; ubi Paulus, Præsides Provinciæ, inquit, habet imperium adversus extraneos homines, si quid manu commiserint; nam & in mandatis Principum est, ut curet is, qui provinciæ præest, malis hominibus provinciam purgare, nec distinguitur unde sint. Ergo Jurisdictio Magistratûs extenditur ad Legatos delinquentes, non minus quàm ad alios.

Ter-

C H A P. IX.

Arguments from the Civil Law against
the immunity of Ambassadors.

TO prove that an Ambassador may be punish'd when he offends, they argue thus.

First, L. 51. D. ad L. Aquiliam; Julian there says, that Crimes must not be unpunished. And from L. 9. §. 5. D. de Publicanis; where Paulus says, to maintain the Authority of publick Discipline, 'tis necessary to punish Offenders. And from L. 14. C. de Pœnis, where the Emperors say, 'tis the publick Interest to remit no Penalty, lest any one should venture upon Crimes. Since then it is the Interest of the State to punish Offenders, it is its Interest likewise, not to suffer Criminal Ambassadors to escape unpunished.

Secondly, From L. 3. D. de Officio Præsidis; where Paulus says, the President of the Province has Power over Strangers, if they have committed any Fault, for one of the Instructions given them from the Prince, is to take Care to clear his Province of his Offenders, without Distinction. The Jurisdiction, therefore, of the Magistrates reaches to Criminal Ambassadors as well as others.

Thirdly,

156 *De Legati delinquentis, &c.*

Tertiò, quòd Princeps territorii leges constituit quoad Legatos, & proinde ejus etiam judicium subire debent. Antecedens probatur ex *l. 1. C. de Commerciis*, ubi Imperatores postquam prohibuerunt mercatores, tam suos quàm Persarum Regis subditos, ultra certa loca negotiationes exercere, iis, qui Legatorum Persarum iter comitati merces duxerint commutandas, humanitatis & legationis intuitu, extra præfinita loca mercandi copiam concedunt, nisi sub specie Legationis diutius in aliquâ provinciâ residentes Legati reditum ad propria comitari neglexerint. Secundò, ex *l. 8. C. de Vectigalibus*, quâ statuitur octavam tantum partem pretii mercium, quas Legati secum afferunt, vectigalis nomine exigendam. Tertio, ex *l. 2. C. Quæ res exportari non debeant*. Ubi Imperatores prohibent barbaris alienigenis, sub Legationis specie venientibus, arma cujuscunque generis venundari. Sequela verò ex eo probatur, quod in *l. 2. §. 13. D. de Origine Juris*, Pomponius, parum est, inquit, jus in Civitate esse, nisi sint qui jura regere possint, & per quos rerum effecta accipiantur.

Quartò, quòd in delictis nulla sit fori præscriptio, quod probatur, primò, ex *l. 1. C. ubi de criminibus agi oportet*, ubi Imperatores,

Thirdly, The Prince enacts Laws for Ambassadors, and consequently they ought to be subject to his Jurisdiction. The first Part is proved thus. L. 1. C. de Commerciis. The Emperors having prohibited both their own and Persian Merchants to Trade beyond certain Places, do yet allow, in regard to the Offices of Humanity and the Privileges of Ambassadors, to those who attending the Persian Ambassadors shall bring Wares to Barter, leave no Trade beyond those Places so appointed, except they stay in some Province longer than ordinary under Colour of the Ambassy, and take no care to return again with it. Again L. 8. C. de Vectigalibus. 'Tis here enacted, that no more than an Eighth Part of the Value of such Commodities as Ambassadors bring with them, shall be demanded as Custom. Again L. 2. C. Quæ res exportari non debeant. The Emperors forbid Arms of any kind to be sold to Barbarians, tho' they come under the Pretence of an Ambassy. The latter Part is proved thus. L. 2. § 13. De Origine Juris; Pomponius says, that Law signifies little in a State, if there be none to direct and govern and put the Laws in Execution.

Fourthly, In Crimes there is no Plea of Exemption from a Court of Judicature, as appears from L. 1. C. ubi de Criminibus agi Oportet.

peratores, Quæstiones, inquit, eorum criminum quæ legibus aut extra ordinem coërcentur, ubi commissæ, vel inchoatæ, vel ubi reperiuntur qui rei criminis esse perhibentur, perfici debere, satis notum est. Secundò, ex *l. 1. C. ubi Senatores*, in quâ Imperatores, Quicunque, inquit, in aliquo crimine fuerit deprehensus, intra Provinciam, in quâ facinus perpetravit publicis legibus subjugetur, nec fori præscriptione utatur; omnem enim hujusmodi honorem reatus excludit. Tertiò, ex *l. 2. C. de Privilegiis Scholarum*, ubi Imperatores, qui inquit virorum clarissimorum comitum meruerint dignitatem foro magistri officiorum tantummodo subjiciant. In criminalibus verò causis tales viros Provincias moderantium Jurisdictionem volumus observare, ne sub prætextu privilegii, vel flagitiorum crescat auctoritas, vel publica vacillet utilitas.

Quintò, Quòd qui gravia & enormia committunt Privilegiis ipsis concessis excidant, & communi hominum conditioni subjiciantur, primò, *l. 12. C. de Dignitatibus*, ubi Imperatores, Judices, inquit, qui se sceleribus maculasse convicti fuerint, ablatis codicillorum insignibus, & honore exuti inter pessimos quosque & plebeios habeantur, nec posthac iis de honore

ret. Here the Emperors declare, that those Crimes which are punished by Law or otherwise shall there be tried, where they were committed or attempted, or where the suspected Persons are found. Secondly, From L. 1. C. ubi Senatores; here say the Emperors, whoever shall be taken in a Fault, let him be subject to the Laws of the Province where the Fact was committed, and not except against the Authority of the Court, for Guilt excludes him from any such Honour. Thirdly, From L. 2. C. de Privilegiis Scholarum, where the Emperors say, that they who have merited the Rank of Noblemen, are subject only to the Jurisdiction of the Master of the Offices. But 'tis our will and pleasure, that in Criminal Cases, even they shall be subject to the Governors of our Provinces, least that under the pretence of Privileges, the most flagrant Crimes grow into Reputation, and the publick Good be shaken.

Fifthly, That those who are guilty of any grievous and enormous Crimes forfeit those Privileges which were formerly indulged to them, and are set upon a Level with the common People. Appears first, From L. 12. C. de dignitatibus; where the Emperors decree, that Judges convicted of any scandalous Crimes, shall loose their Commissions, be divested of their Honour, and be ranked among the vilest and

nore gloriari liceat, quo se ipsos indignos indicaverunt. Secundò, *l. 4. §. 8. D. de Judiciis*, Quamvis majores Judices, tempore Magistratus, civilibus actionibus non conveniantur; si tamen in officio delinquant, omni exceptione sublatâ, vel administrante, vel post Administrationem depositam, publica judicia subire tenentur. Tertiò, *l. 4. C. ad legem Juliam repetundarum*, ubi Imperatores, si quis, inquit, quâcunque de causâ judicem improbum probare potuerit; Is, vel administrante eo, vel post administrationem depositam, in publicum prodeat, crimen deferat, delatum probet, cum probaverit & victoriam reportaturus & gloriam. Ita etiam Clerici, etsi inviolabiles sint, ut si quis alicui eorum manus inferat, in Canonem læsententiæ incidat, *cap. 1.* Si quis extra de sententiâ excommunicationis, tam diu tamen gaudent privilegiis, quam diu ea, quæ sunt suæ professionis, observant, & ordinis eminentiam vitæ ornant innocentia. *cap. Abbas extra, de verborum significatione.*

Sextò, ex *l. 8. D. de rerum divisione*, ubi Marcianus, sanctum est, inquit, quod ab injuriâ hominum (non autem à jure magistratuum) defensum est, & *l. ult. de Legationibus*,

basest of the Vulgar, without any possibility of any future Pretences to Honour, of which they have proved themselves utterly unworthy. Secondly, L. 4. §. 8. D. de Judiciis. Tho' Magistrates of higher Degree, cannot be obliged to appear in Civil Suits, during the time of their Office, yet if they be guilty of a Breach of their Commission they are bound, without any pretence of Privileges to take their publick Trials, either while they are in Commission, or after they have laid it down. Thirdly, L. 4. C. ad legem Juliam repetundarum. The Emperors say, that if any one can prove a Judge corrupt in any Instance let him, either during the Administration of the Judge, or after he has resign'd his Office, come forth and inform and prove his Information, so shall he both gain his Cause and go off with Applause. Clergymen likewise, tho' they be so inviolable as that a Person striking any of them incurs the Penalty of the Canon, C. 1. Si quis extra; de Sententiâ Excommunicationis, yet enjoy their Privileges no longer, than they Act suitably to their Profession, and adorn the Dignity of their Order with Innocence of Life. Cap. Abbas extra, de Verborum Significatione.

Sixthly, From L. 8. D. de rerum divisione; where Marcian says, that is Sanctum which is guarded against the Injury of Men, but not against the lawful Power of Magistrates;

162 *De Legati delinquentis, &c.*

gationibus, Si quis Legatum pulsasset, violasset, &c. quæ omnia ad privatam ultionem, & ad damnum injuriâ datum spectant. At longè aliud est Legatum punire & Legatum violare. Legatum punire Magistratûs proprium est, à quo quæ jure potestatis fiunt ad injuriarum actionem non pertinent, inquit Ulpianus l. 13. §. quo jure, D. de Injuriis, cùm juris executio non habet injuriam. l. 18. D. ead.

Septimò, ex l. 24. D. de Judiciis, ubi Paulus, Legati, inquit, ex delictis in Legatione commissis coguntur Romæ judicium pati, sive ipsi admiserint, sive servi eorum. Quòd etsi traditum sit de Legatis Provincialibus, quibus Roma est communis Patria, & forum competens, eadem tamen ratio est in aliis Legatis, scilicet Principum exterorum, atque ideo idem jus: Nam quod illis Patriæ communio, hoc istis sceleris contagio tribuit, inquit Author Quæstionis.

strates; and from L. ult. D. de Legationibus, si quis Legatum pulsasset, &c. all which relate to private Revenge, and injurious Suffering. But to punish and to injure an Ambassador are very different things. The former belongs to the Magistrate, who cannot be accused of Injury for acting according to his lawful Power, as Ulpian observes L. 13. §. quo jure D. de injuriis, since the Execution of Law is not injurious. L. 18. D. ead.

Seventhly, From L. 24. D. de Judiciis, where Paulus affirms, that Ambassadors are subject to the Roman Jurisdiction for Crimes there committed, either by themselves or their Servants. Now tho' this be spoken of Provincial Ambassadors, to whom Rome was a common Country and a proper Court of Judicature, yet the same Reason holds good in Relation to other Ambassadors of Foreign Princes, and consequently they are subject to the same Law. For, says the Author of the Quæstio, &c. the Contagion of the Crime makes these as Obnoxious, as the Communion of the Country does the other.

CAPUT X.

*De Responsionibus ad Argumenta ex
Jure Civili contra immunitatem Le-
gati.*

AD Argumentum primum, 1. Quòd maleficia puniri debeant. Respondetur, quòd sicut interest reipublicæ ut maleficia subditorum puniantur, ita interest Communionis inter gentes, ut delicta etiam Legatorum puniantur. Sed ut Jus Civile modos subditos puniendi præstituit, ita in Legatis puniendis jus Gentium observandum est, de quo Gentilis, hæc videtur, inquit, gentium definitio, ut dedatur Legatus qui jus gentium violavit.

Ad secundum, quòd præses provinciæ imperium habeat etiam in extraneos. Respondetur, verum esse in extraneos privatos qui sub præsidio legum & magistratuum civilium protectionem habent, & qui conditionis eidem inferioris sunt; non in Legatos, qui citra protectionem legum & magistratuum civilium, à jure gentium, quo sacrosancti habentur, præsidium obtinent, & in quantum suos principes repræsentant, nequaquam provinciæ prædici sunt inferiores.

Ad

C H A P. X.

Answers to the Arguments from the
Civil Law against the immunity of
an Ambassador.

ARG. 1. Crimes ought to be punished.
Ans. As it is the Interest of a State to
punish the Crimes of its Subject, so likewise is
it the common Interest of Nations to punish the
Crimes of Ambassadors. But as the Civil Law
appoints the Methods of punishing Subjects, so
the Law of Nations must be regarded in punish-
ing Ambassadors. Now, says Gentilis, the
determination of the Law of Nations in this
Point seems to be this, that an Ambassador that
has violated the Law of Nations should be de-
liver'd up to Punishment.

Arg. 2. The President of a Province has
Power over Strangers. Ans. 'Tis true, he has
Power over private Strangers who are protected
by the Civil Law and its Magistrates, and
who are inferior to the President; but he has
no Power over Ambassadors, who are not un-
der the Protection of those Laws and Magi-
strates, but under the Law of Nations, by which
they are esteemed Sacred; and in as much as
they represent their Principals are not at all In-
ferior to the Governor himself.

Arg.

Ad tertium, quòd Princeps in suo territorio Legatis leges constituit, & proinde de earum legum observatione judicare potest, cujus argumenti antecedens confirmatur ex *L. 1. C. de Commerciis*; *L. 8. C. de Vectigal.* & *L. 2. C. Quæ res exportari non debeant*; Respondetur, quòd prohibitio, ne mercatores extranei ultra loca præfinita negotientur, pendet à præcedenti fœdere inter Imperatorem & Persarum Regem, & quod indultum est comitibus Legatorum ut extra præfinita loca negotientur, & quod vectigalia minora à Legatis, quam aliis exigantur, in eorum favorem constituta sunt, nequaquam ad aliquam obligationem ipsis inducendam. Et quod de Armis ad Legatos Barbaros non vendendis statuitur, non ad Legatos pertinet, sed ad subditos imperii, qui soli illius constitutionis poenæ subjiciuntur.

Ad quartum, quòd ibi quisq; puniendus sit, ubi deliquit, nec in delictis ulla detur fori præscriptio. Respondetur, quòd etsi generale sit, quòd quis in loco delicti, vel ubi reperitur, puniatur, jure tamen imperatorio quibusdam personis indulgetur, ut non à judice loci ordinario, sed ab aliis judicibus specialibus de criminibus conveniantur, utpote senatoribus *L. 3. C. ubi Senatores*; & Militibus *L. 1. C. de Officio Ma-*

Arg. 3. *The Prince within his own Territories enacts Laws for Ambassadors, and consequently is Judge of the Obedience to be paid to those Laws. The Antecedent is proved from L. 1. C. de Commerciis. L. 8. C. de Vestig. & L. 12. C. Quæ res exportari non debeant. Ans. The prohibiting Foreign Merchants from trading beyond the stated Places, depends upon a former Treaty between the Emperors and Persian Kings. And the Indulgence granted to the Attendants of Ambassadors to Trade beyond the stated Places, and the exacting smaller Customs from the Ambassadors than from others, are Laws enacted in their Favour, and not designed to lay any Restraint upon them. As for the Statute which prohibits the selling of Arms to Barbarian Ambassadors, that relates only to the Subjects of the Empire who alone are liable to the Penalty of that Statute.*

Arg. 4. *The Offender must be punish'd where the Fact was committed, and Guilt destroys Privilege. Ans. It is indeed a general Rule to punish where the Offender is found, or the Offence committed; but by the Civil Law some Persons are exempted, so as not to be tried by the common Judge of the Place, but by other particular Judges, as Senators, L. 3. C. ubi Senatores, and Soldiers, L. 1. C. de Officio Magistrum Militum. And as the Emperors might*

Magistri Militum; & quemadmodum Imperatores subditos imperio judiciis ordinariis eximere potuerunt, ita Gentibus statuere licuit, ut communis mos, qui quemvis in alieno loco existentem ejus territorii jurisdictioni subjicit, exceptionem, ut ait Grotius, in Legatis pateretur, & permetteret ut à suis duntaxat Principibus punirentur.

Ad quintum, quòd qui gravia & enormia crimina committunt. Privilegiis ipsis concessis excidant, & communi hominum conditioni subjiciantur, ad quod confirmandum affertur *L. 12. C. de dignitatibus. L. 14. C. ad L. Juliam repetundarum.* Quibus Authoritatibus Jurisconsultorum Anglicorum, qui responderunt Legatum, qui contra principem, ad quem missus est, rebellionem concitavit, privilegiis omnibus excidisse, opiniones niti videntur; Respondetur, quòd non sit eadem eorum, qui publica & civilia officia gerunt, & Legatorum conditio. Quia eorum, qui publica & civilia officia gerunt, conditio pendet à legibus Civilibus & voluntate Principis solius, à quibus constituti sunt, & qui pro arbitrio eorum authoritati, dignitati, & privilegiis derogare, & de iisdem pro libitu statuere possit; Legatorum verò conditio & immunitas pendet à jure

might exempt their Subjects from ordinary Jurisdiction, so the Nations might resolve, that the common Rule of Subjection to local Jurisdiction might admit of an Exception in the Case of Ambassadors, and allow them to be punished only by their Principals.

Arg. 5. Grievous and enormous Offenders forfeit their Privileges and are levell'd with the Commonalty, as appears from L. 12. C. de dignitatibus. L. 14. C. ad L. Juliam repetundarum. Upon the same Authorities the Answer of the English Lawyers seems to depend. Ans. The Circumstances of publick Civil Officers and of Ambassadors, are not the same. For Civil Officers depend upon the Civil Laws and the pleasure of the Prince by whom they are appointed, and who may diminish their Power, Honour and Privileges, as much as he pleases. But the immunity of Ambassadors depends upon the Law of Nations, and more especially upon the Authority of their Principals, and in the last Place upon his pleasure that receives them. Nor are they removed from their Office till their Principal recalls them, or the Prince with whom they reside dismisses them; and as long as they continue in their Office, they ought to enjoy all the Security and Immu-

jure gentium, præcipuè ab authoritate ejus qui Legatum mittit, deinde à voluntate etiam ejus qui admittit, nec officio suo privatur, donec à principe suo revocatur, vel saltem ab altero principe dimittatur, & quamdiu in officio manet, securitate & immunitate officio debitis frui debet. Quòd iidem Jurisconsulti Anglicani ad quæstionem, an si procuratori principis, qui in alterum regnum venerit, & sub custodia habeatur, denunciatur illum non amplius pro Legato habendum, an iste procurator privilegia Legati ex jure vendicet; Responderunt, Principem posse prohibere Legatum, ne regnum intret, & jubere ut regno exeat, si intra terminos Legato præstitutos se non contineat, ita tamen ut interim Legati privilegiis pro authoritate delegatâ fruatur.

Nec ex legibus allegatis evinci potest, quenquam ex delicto commisso, officio aut privilegiis eidem debitis statim excidere; sed constat primò, judicibus, qui de sceleribus convicti fuerint, primò, insignia dignitatis auferenda ipsosque honoribus exuendos esse, & tum demum inter plebeios habendos, nec postea iis de honore gloriari licere. Secundò, quòd repetundarum rei, si minoris ordinis judices fuerint, durante officio; si majoris, post administrationem

nity due to their Office. *This was the Answer of the abovemention'd English Lawyers to another Question, viz. whether, if a Foreign Minister under Confinement be told by Authority that he must no longer be treated as an Ambassador, can justly claim the Rights of an Ambassador? To this Question their Answer was, that a Prince might forbid an Ambassador to enter his Dominions; and might command him to leave them, when he is there, if he keeps not within his due Bounds; but in the mean time, he ought to enjoy the Privileges of an Ambassador in regard to the Authority delegated to him.*

Nor can it be proved from the Laws alledged, that any one does ipso facto forfeit his Office or his just Privileges. But it is evident first, that the Badges of Authority are to be taken from the Judges Convict, and themselves to be divested of their Honours, and then to be ranked among the Vulgar without aspiring to any Honour for the future. Secondly, They, that are accused of Bribery, may be arraign'd and condemn'd for any Offences committed in their Office, if they be inferior Magistrates,

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during

strationem depositam de delictis in officio commissis accusari & condemnari possunt. Tertiò, quòd Clerici, ita demum privilegio non gaudeant, si ab Ecclesiasticis Judicibus, ordine Clericali exuti, iudicibus secularibus puniendi dedantur. Quartò denique, quòd qui privilegiis abutuntur, ea amittere merentur, sed quòd meruerint, sententia declaratoria præcedere debet; quibus concessis, ad Legatos delinquentes nihil aliud inferri potest, quàm quod propter gravia delicta iis Legati officium abrogari possit, sed quamdiu eo munere utuntur, nihil impedit, quo minùs immunitate Legationis muneri debitâ liberè fruantur.

Ad Sextum, ex *l. 8. D. de rerum divisione*, & *l. ult. D. de Legationibus*, quòd Legati sancti sint à privatorum injuriis, non à jure magistratum, Respondetur, quòd immunes sunt ab injuriis hominum, nec lex quicquam de privatis magis quàm de magistratibus innuit, & injuriarum verbo non solùm verbera & contumeliæ, ex quibus actio injuriarum oritur, continentur; sed etiam iniquitas injuria dicitur, inquit Ulpianus *D. de Injuriis l. 1. cum quis iniquè vel injustè sententiam dixit*, quod ad magistratus & judices pertinere potest; & ut Legati à cæteris, quantum ad injurias, distin-

during their Commission; but if they be superior Judges, not till they have resign'd their Office. Thirdly, Clergymen lose not their Privileges, till they have been suspended by their Ordinary and deliver'd to the Civil Power to be punish'd. Fourthly, They who abuse their Privileges deserve to lose them, but their demerit must be first declared by a judicial Sentence; now if these things be granted, nothing can be hence concluded against Criminal Ambassadors, but that for heinous Offences they may be displaced; but as long as they continue in their Office, there is no Reason to deprive them of the Immunity which is due to their Character.

Arg. 6. From L. 8. D. de rerum divisione, and L. ult. D. de Legationibus; Ambassadors are secured from private Injuries, but not from the Power of the Magistrates. Ans. They are secured from the Injuries of all Men, and the Law makes here no Distinction between Magistrates and private Men; besides, the Word Injuries comprehends not only Blows and Insults, whereon a Prosecution for Injuries is grounded, but also partiality, says Ulpian, is called an Injury. D. de injuriis L. 1. cum quis iniquè vel injustè, &c. Now this may extend to Magistrates and Judges, and put a Distinction between Ambassadors

174 *De Legati delinquentis, &c.*

distinguantur. Ulpianus *D. de rerum divisione l. 9.* Sanctum, inquit, dicitur, quod sanctione quâdam confirmatum est, unde interdum in sanctionibus adjicitur, ut, qui aliquid commisit, capite puniatur.

Ad septimum ex *l. 24. D. de Judiciis*; quod Legatum ex delictis Romæ judicium pati oporteat, & eadem sit ratio Legatorum provincialium & exterorum principum: respondetur, quod & si delicta hos perinde atque alios reatu afficiant, non tamen æquè eidem Jurisdictioni subjiciunt. Quod Legati Provinciales non solum ipsi, sed etiam Provinciæ à quibus mittebantur Romano Imperio suberant. Legati verò exterarum gentium nec ipsi subditi sunt, nedum illi, à quibus mittuntur, & quorum personas sustinent, cum neminem se superiorem agnoscant.

C A P U T. XI.

De Opinionibus aliorum Authorum, quæ ad Grotii sententiam de immunitate Legati propiùs accedunt.

A Uthores, qui de hâc quæstione scripserunt, præcipui sunt
1. Conradus Brunus, Principum Bavarix Consiliarius anno 1548, 2 Al-

and other Men in Relation to injuries. Ulpian D. de rerum divisione L. 9. says, that is Sanctum which is confirm'd by some Sanction, for which reason, it is sometimes added in Sanctions, that he is to be beheaded that has committed such a Crime.

Arg. 7. An Ambassador ought to be judged at Rome for his Faults committed there, and the case of Provincial and Foreign Ambassadors is the same. L. 24. D. de Judic. Ans. Tho' they are equally guilty, they are not equally subject to the same Jurisdiction. For Provincial Ambassadors were themselves not only subject to the Roman Empire, but even the Provinces, by which they were sent. But Foreign Ambassadors are not their Subjects, and much less then are their Principals, whom they represent, which acknowledge no Superior.

CHAPTER XI.

The Opinions of other Authors who are nearly of the same Mind with Grotius.

THE Authors that have wrote upon this subject, are

1. Conrade Brun, Counsellor to the Elector of Bavaria in the Year 1548.
2. Al-

176 *De Legati delinquentis, &c.*

2. Albericus Gentilis Juris Civilis Professor Regius Oxoniæ 1585.

3. Hermannus Kirchnerus, 1604.

4. Author Quæstionis veteris & novæ, 1606.

5. Carolus Paschalius Regis Galliæ in sacro consistorio Consiliarius, 1600.

6. Johannes Hotomannus, Francisci Hotomanni filius, Gallicè.

7. Christophorus Besoldus, Antecessor Tubingensis, 1624.

8. Fredericus Marsellaer, Eques Hispanus.

E quibus ad Grotii sententiam propiùs accedunt Gentilis, Paschalius, Hotomannus & Marsellaer, alii ab eâ longiùs discedunt.

Albericus Gentilis, etsi affirmet loci judicem Legati esse judicem, tamen Legato dicendi libertatem concedendam, linguam contumeliosam compescendam; cum Legato speculatore non duriùs agendum, quàm ut non admittatur, vel admissus expellatur; si verò Legatus in principem, ad quem missus est, conjuraverit, non morte puniendum, sed dimittendum; quoniam, ut in crimine majestatis affectus & consilium puniatur, est Juris Civilis, non est Juris Naturalis ratio; si verò Legatus vel levissimam injuriam Principi actu intulerit,

2. Albericus Gentilis, *Regius Professor of Civil Law at Oxford*, 1585.

3. Herman Kirchner, 1604.

4. *The Author of the Quæstio vetus & nova*, &c. 1606.

5. Charles Paschal *Counsellor to the King of France*, 1600.

6. John Hotoman, *Son of Francis Hotoman, in French*.

7. Christopher Besold.

8. Frederick Marsellaer, *a Spanish Knight*.

Of those that agree most with Grotius are Gentilis, Paschalius, Hotoman and Marsellaer; the rest differ considerably from him.

Gentilis, tho' he affirms the Judge of the Place to be the Judge of the Ambassador, thinks the Ambassador has a Right to liberty of Speech, which growing abusive may be restrain'd; that an Ambassador who is a Spy must be treated no worse than to be deny'd Admittance; or if admitted, to be banish'd; that if he plots against the Prince, he must not be put to Death, but sent away; since to punish the Design in Cases of High Treason is the method of the Civil Law, and not of the Law of Nature; that if an Ambassador has actually done the least Injury to the Person of the Prince,

rit, vult eum aut interfici aut dedi. In alios si Legatus peccaverit, censet, quòd ex lege talionis vel arbitrio Principis judicari possit.

Carolus Paschalius censet, quòd si Legatus sacrosancto Legationis munere ad sævum proditoris ministerium abutatur, ferro & igni prosequendus sit. Quòd judicium, inquit, etsi par est esse inflexibile, tamen hunc rigorem prudentia declinat; quia verendum est, ne Legatum licèt reum Majestatis exteræ gentes præcipitatis studiis condemnatum putent. Postea statuit quòd deprehensus & convictus, ejiciendus sit, aut postulandum ut dedatur. Si stupra, adulteria, cædes, taliaque Legatus ausus fuerit perpetrare, censet de ipso querendum apud illum cujus Legatione fungitur, cui omnis res æstimanda, petendumque ut in ultionem rei atrocis severus vindex insurgat.

Johannes Hotomannus, Si Legatus, inquit, qui sub specie amicitia ad alium Principem accedit, in ejus perniciem aliquid moliatur, se culpabilem & inexcusabilem reddit, ita ut nullum privilegium juris gentium possit illum protegere, quin obnoxius sit pœnis ordinariis, quæ iis, qui sunt pacis publicæ perturbatores, imponuntur.

Prince, he ought then to be killed or deliver'd up; that if he has injured any other Persons, the Prince may judge him according to the Law of Retaliation, or as he thinks fit.

Charles Paschal is of Opinion, that an Ambassador abusing his inviolable Character to the cruel purposes of Treason, is to be pursued with Fire and Sword. And tho', says he, this ought to be the unvariable Judgment in this Case, yet Prudence declines this Severity; for it is to be feared that Foreign Nations would think the Ambassador tho' really guilty of Treason, was condemn'd by prejudice and partiality; at last he determines, that when the Ambassador is seized and convicted, he ought either to be sent away, or demanded to Punishment. If he has been a Fornicator, Adulterer, Murthurer, or the like, complaint should be made to his Principal, who ought to consider the whole Affair; and a Request should likewise be made, that he would shew himself a severe Revenger of any flagitious Crime.

John Hotoman says, that if an Ambassador comes under Colour of Friendship to another Prince, and contrives his Destruction, he is inexcusably Guilty, and no privilege of the Law of Nations can exempt him from the common Punishments inflicted upon the disturbers of the publick Peace. Yet afterwards he affirms, it is a more grateful Punishment to send him out of
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nuntur. Postea tamen affirmat suaviorem esse puniendi rationem, si extra territorium amandetur & ad proprium dominum remittatur, cum crimen ejus, aut per literas, aut per testimonia, aut per evidentiam coepta facinoris manifestum fuerit; quod multis ait usitatum, qui privilegia publicis personis debita conservandi, aut bonum pro malo reddendi, studiosi apparere voluerunt. Deinde, si Legatus privatum quenquam injuriâ afficit, dicit se nescire quâ lege prohibitum sit, quin rigorem illius loci, ubi injuriam commisit, possit evadere, cum eâdem ratione etiam à proprio domino, quod tutissimum putat, putat, puniri possit.

Fredericus Marsellaer, Generaliter, inquit, cum quis deliquit, Jurisdictionem ejus subiisse intelligitur, in cujus jurisdictione deliquit, Legatus tamen interdum remittitur ad eum, cujus est Legatus; qui si prudens & probus sit, neque ejus culpæ conscius, manifestum faciet flagitia ejus indignatione suâ non carere. Si consilio & consensu sui Principis Legatus deliquerit, non expectandum est, ut ab eo puniatur, à quo laudem & præmium expectat. Addit, Volunt plerique Legatos hostilia molientes, atque in crimine læsæ Majestatis deprehenso, prehendi, plectique posse;

the Kingdom to his Principal, when his Crime is evident by Letters or Witnesses, or the notoriety of the Attempt. And this he says, has been a common Practice with those, who have affected to be thought tender of the Privileges of publick Persons, or desirous to return Good for Evil; he concludes, that if an Ambassador has injured any private Person, he knows no Reason, why the Offender may not escape the Severity of the Place, where the Offence was committed, since he may as well be punished by his own Master; and this he takes to be the safest Course.

Frederick Marsellaer observes, it is a general Rule, that a Man is subject to the Jurisdiction of that Place where he has committed a Fault. But an Ambassador is sometimes sent home to his Principal, who, if he be prudent and honest, and innocent of the Fault, will shew the wicked Actions shall not escape his Displeasure. If the Ambassadors Crime be acted by the King's Direction or Approbation, 'tis not to be expected he will punish him, who has Reason to hope to be commended and rewarded for what he has done. A great many, says he, are for apprehending and executing Ambassadors that are hatching Mischief, and are caught in

posse; ideóque Legatus unà cum familiâ in domo claudi & custodiâ detineri, & alia subire potest, quorum adminiculo facinus detegatur, & periculum depellatur. Quòd si eo processerit, ut hostis potius, quàm hospitis loco habeatur, pœnæ se obnoxium reddit. At si Princeps qui periculum depulit, ei parcere quàm plectere malit, hoc suadet fama clementiæ & humanitatis quæ securum reddit; suadet utilitas, quæ ex principis & populi externi gratiâ proveniet.

Gentilis Opinio ad Grotii sententiam propiùs accedere videtur, quia Legatum in Principem conjurantem dimittendum censet, & si eum actualiter læserit, non simpliciter morte, sed vel morte vel deditione plectendum putat. Paschalius, Hotomannus, & Marsellaer, Politici, magis quàm Jurisconsulti, propiùs etiam accedunt, quòd quamvis ad deterrendum Legatos ex opinione vulgari periculum à iudicibus, ubi versantur, proponant; ad evitandum tamen incommoda, quæ ex offensionibus Principum contingere possunt, ipsis mitiùs cum Legatis agendum suadent, & quod ille iustitiæ, hi prudentiæ tribuendum censent.

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their Treason; and that therefore an Ambassador with his whole Family may be confin'd to his House, and kept under Guard, and suffer any thing else that may be of use to detect the Fact, and prevent the Danger; and if he has proceeded so far as to shew himself a Foe instead of a Friend, he has made himself liable to Punishment. But if the Prince, having prevented the Danger, chooses rather to spare than to punish him, the Reputation of Clemency and Humanity which secures him; and the Advantage of gaining the Favour of the Foreign Prince and his People, will be strong Inducements to incline him so to do.

Gentilis comes still nearer to Grotius. For he thinks the Ambassador that conspires against the Prince ought to be sent away; and if he has actually hurt the King, he is not then absolutely to be kill'd, but either to be kill'd or deliver'd to Punishment. Paschal, Hotoman and Marsellaer, are Politicians rather than Lawyers, and are pretty much of Grotius's Opinion in that, tho' they threaten Ambassadors with Punishment from the Fudge of the Place, where they reside, yet to avoid the inconveniences arising from the displeasure of Princes, they advise a milder Treatment of Ambassadors, and what Grotius thinks is a Debt to Justice, they reckon to be a Duty of Prudence.

CAPUT XII.

De Opinionibus Authorum qui ab H. Grotii sententiâ de immunitate Legati magis dissentiunt.

Ab H. Grotii sententiâ de immunitate Legati magis dissentiunt Conradus Brunus ; Author Quæstionis veteris & novæ ; Kirchnerus & Besoldus.

Conradus Brunus censet jus Legatorum non violandorum iis tantum servandum, qui honestè in Legatione versantur. Ad quod confirmandum, affert quod Legatis Justiniani Theodatus dixit, & authoritates ex jure Civili, utpote *l. 12. C. de Dignitatibus*, & *l. 17. §. in Criminalibus eod. Tit.*

Author Quæstionis veteris & novæ asserit, Si Legatus sub specie administrationis publicæ, quocunque pacto majestatem principis, ad quem mittitur, lædat, ejusve statum & imperium turbare ac subruere hostiliter tentet, eum, nullâ admissâ privilegii juris gentium exceptione, licenter capi ac detineri, quinetiam causâ cognitâ condemnari & puniri posse. Circum-
speciè

C H A P. XII.

The Opinions of such Authors as differ considerably from *H. Grotius* in this Point.

THose which differ most from *Grotius* are *Conradus Brunus* the Author of the *Quæstio vetus & nova*, *Kirchner* and *Besoldus*.

Brunus thinks, that the Right of Ambassadors not to be violated, ought to be allow'd only to such as behave themselves honourably in that Employment. In confirmation of this Opinion, he cites the Words of *Theodatus* to *Justinian's* Ambassadors, and some Passages from the Civil Law, viz. L. 12. C. de dignitatibus. L. 17. §. in Criminalibus. C. eod. tit.

The Author of the *Quæstio* &c. asserts, that if an Ambassador under the show of his publick Business, commits any sort of Treason against the Prince he is sent to, or endeavours to embroil or overthrow his State and Government; he may then be lawfully seiz'd and imprison'd, notwithstanding any Privilege claim'd by the Law of Nations; and upon a full hearing may be condemn'd and punish'd. However,

spectè tamen in re tanti momenti agendum putat, ut non ex suspicione aut levibus indiciis urgeantur Legati, sed cùm ἐπ' αὐτορῶςω deprehenduntur, vel argumentis convincuntur, ut evidentia sceleris non egeat clamore accusationis.

Kirchnerus, Præsidium, inquit, securitatis, contra decus & honorem Legationis versantem non tuetur; & censet capitali poenâ in Legatum animadverti posse ob illa crimina, quæ cùm divinis, tùm naturalibus legibus sanguinis poenam merentur, ut homicidia, adulteria, latrocinia. In illis verò, quæ singularibus cujusque civitatis moribus aut statutis vetita durior poenam aut mulctam impositam habent, si Legatus offenderit secundùm legis Civilis rigorem coërceri non debere.

Besoldus ait, Si Legatus aliquid gravius in Principem, ad quem Legatus est, committit, citra juris gentium injuriam contemptumve puniri potest ab ejus Principis magistratu, cujus imperium majestatemve læsit. Sed & si Legatus privato subdito injuriam inferat, judicio ejus loci, ubi degit, subjiciendus est. Alibi tamen putat sic distingui posse, quòd Legatus contra officium hominis delinquens, utpote

he thinks in a Business of such Importance, that 'tis necessary to proceed with the utmost Caution; that Ambassadors are not to be prosecuted upon Suspicion or trivial Circumstances, but only, when they are taken in the Fact, or convicted by clear Proofs, that the evidence of the Crime may want no Clamour of Accusation to aggravate its guilt.

Kirchner says, this Protection does not secure him that acts contrary to the Dignity and Honour of his Embassy, and thinks an Ambassador may be put to Death for such Crimes as are Capital by the Laws of God and Nature; as Murder, Adultery, Robbery, &c. But if an Ambassador be guilty of some Crime strictly prohibited, and severely punishable only by the Civil Laws of any particular State, he ought not then to be punished according to the strictness of that Civil Law.

Besoldus affirms, that an Ambassador may be punish'd by the Civil Magistrates of that Prince, whom he has greatly injured, without any breach or neglect of the Law of Nations. And even for injuring any private Subject, he is liable to the Jurisdiction of the Place where he lives, but in another Place he makes this Distinction, that an Ambassador offending against the duty of a Man, for Murder, Adultery, or the like, ought to be sent to his Principal;

pote homicidium, adulterium vel simile delictum perpetrando, ad suum principem remittendus est, si verò directè contra Legati officium, in eum, ut in hostem animadvertendum esse.

C A P U T XIII.

De Opinionibus aliorum Authorum censura Grotii ejusque Assertoris animadversiones.

H Grotius non ignarus, uti videtur, quid de hac re alii scripserint, diversorum opiniones recenset & de iis judicium suum ita profert. Alii, inquit, sic sentiunt, à Legato vim duntaxat injustam arceri oportere; censent enim privilegia ex jure communi interpretanda; verius autem est Privilegia ita intendi ut aliquid tribuant ultra jus commune, quòd si Legati ab injustâ tantùm vi tuti essent, nihil in eo magni, nihil præcipui. Alii non de omnibus causis putant Legato vim inferri posse, sed ita demum si jus gentium ab eo lasum fuerit, quod satis latè, inquit, patet; nam in jure gentium jus naturæ includitur, ita ut ex omnibus jam delictis

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pal; but if his Crime be directly contrary to the duty of an Ambassador, that then he must be punished as a publick Enemy.

C H A P. XIII.

Crotius's Censure of the Opinions of other Authors.

GRotius it seems, was not unacquainted with the writing of others upon this Subject, and accordingly, reckoning up different Opinions he sets down his own Judgment of them. Some, says he, are of Opinion, that an Ambassador ought to be secured only from unjust Force, thinking that their Privileges are to be interpreted agreeably to the common Law, whereas it is more reasonable to suppose, that Privileges give a Right which is not allow'd by the common Law. And if Ambassadors were protected from unjust Force only, there would be no great Advantage, no peculiar Privilege in such a Protection. Others think Ambassadors may be assaulted, not upon all Occasions, but then only, when he violates the Law

Legatus puniri possit, nisi quæ ex mero jure civili oriuntur. Restringunt hoc alii ad ea quæ contra statum reipublicæ aut dignitatem ejus, ad quem Legatus mittitur, fiunt. Qua ipsum, sunt qui putant periculosum, ideoque querelas exponendas ei qui misit, ejusque arbitrio Legatum permittendum ; sunt & qui putant consulendos reges aut gentes quorum nihil interest quod prudentiæ esse potest, juris non est. Hæc Grotius.

Insuper animadvertere licet, quòd qui de hac re scripserunt, non tam ex jure gentium quàm ex jure civili quid justum sit statuunt ; aliique odio proditionis & perfidiæ omnem juris gentium respectum prætermittunt ; quod, cùm veritati, quæ in historiis apparet, repugnet, ad distinctiones prout ipsis visum est convolant ; quasi non jus ostendere, sed pro arbitrio condere & dispensare in eorum potestate esset.

Conradi Bruni Opinio, quòd jus Legatorum non violandorum iis tantummodi servan-

Law of Nations, which is indeed of a large Extent. For in the Law of Nations, the Law of Nature is included, so that by this, an Ambassador may be punish'd for all manner of Faults, but those only which are made such by the Civil Law. Others restrain this to Actions committed against the Government or the Dignity of the Prince, to whom the Ambassador is sent. But even this, others take to be a dangerous Concession, and therefore that complaint should be made to his Principal, and that the Ambassador should be left entirely to his Discretion. And some there are who think, that Kings and Nations that are disinterested should be consulted in this Case; which may be matter of Prudence, but not of Right. Thus far Grotius.

We may further observe, that the Writers on this Subject determine Justice, not so much by the Law of Nations as by the Civil Law. Others out of their Aversion to Treason and Treachery entirely neglect the Law of Nations, and therefore finding their Determination contrary to matters of Fact recorded in History, they take shelter under Arbitrary Distinctions, as if their Business were, not to shew what is Law, but to make and dispense it as they please.

Brun's Opinion, that the Right which Ambassadors have of not being violated is to be secured

servandum sit, qui honestè in Legatione versantur, confirmatur ex eo quod Theodatus ad Legatos Justiniani dixerit, quòd quanti æstimandum sit jamdudum ostenditur, & quantum ad auctoritates ex jure civili illæ inter alia ejus generis argumenta discutiuntur. Illud in præsentì observari libet, quòd cùm juris Cæsarei consulti in Angliâ de Episcopo Rossensi responderint, hic Author unicus extiterit, qui de eâ re tunc temporis quicquam traderat, cum quo consentire videntur in eo, quòd Legatum, qui contra Principem, ad quem missus est rebellionem concitat, Legati privilegiis jure civili Romanorum excidere opinantur; & quòd ulterius pœnæ subjiciendum responderunt, quæstioni non congruit, an ut hostis pœnæ subjaceat, sed de pœnâ extra regnum expellendi intelligi potest.

Author Quæstionis, qui non solùm in Legato perduellionis crimen consummatum, sed etiam ejusdem propositum & conatum puniendum censet, circumspèctè tamen agendum dicit, ut non suspicione & levibus indiciis, sed cùm scelus notorium est, & probationes manifestæ, in Legatum manus injiciantur. Et casus prioris Tarquinii Legatos exemplum proponit, quasi ipsi liberati fuissent, quòd levibus tantùm

cured only those that behave themselves honourably in their Ambassy, depends upon the Words of Theodatus to Justinian's Ambassadors, the weight of which has already been shewn, and the Authority of the Civil Law; which are examin'd among other Arguments of that sort. At present we will only observe, that when the English Civilians gave their Answer about the Bishop of Ross, that this was the only Author that had then writ upon this Subject, and with whom they seem to agree, in that they think an Ambassador, who raises Rebellion against the Prince he is sent to, forfeits his Privileges by the Roman Civil Law. The rest of their Answer, that he is likewise obnoxious to Punishment is impertinent to the Question, whether he may be punished as an Enemy? But may be understood of punishing him by driving him out of the Kingdom.

The Author of the Quæstio, &c. who judges that not only open Acts of Hostility, but even such a Design and Attempt is to be punished, says the Proceedings must be very Cautious; that an Ambassador may not be seized upon Suspicion, and trivial Circumstances, but only when the Fact is notorious and the Proofs evident. He proposes the Ambassadors of Tarquin as an Instance of the first Case, as if they had been set at Liberty for want of substantial Proof:

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tantum indiciiis arguerentur ; cui id quod directè contrarium est, ex historiâ apparet. Nam datæ literæ, inquit Livius, ut fidei pignus, manifestum facinus fecêre. Nec ex aliis probationibus Bruti Consulis filii, conjurationis participes, nudati virgis cæsi securi feriebantur : nisi quis cogitare possit eas literas contra Legatos, qui acceperunt, & penes quos repertæ sunt, quàm contra ipsos qui scripserunt, levius indicium fecisse. Ita ut ex hoc exemplo confirmari possit Legatum, non solum ex suspitione & levibus indiciiis reum, sed cum ejus facinus manifestum & indubitatum est, beneficio juris gentium liberandum esse.

Kirchnerus, qui, ut alii, Legatum delinquentem in loco delicti puniendum censet ; de delictis tamen seu pœnis delictorum distinguit, ut de iis, quæ contra jus divinum, naturale, seu gentium committuntur, Legatus teneatur ; ab iis verò, quæ moribus aut legibus civilibus delicta constituuntur, sit immunis ; quæ distinctio à peregrinis ad Legatos transfertur, quia ex sententiâ Jurisconsultorum peregrini vel forenses non tenentur, nisi id commiserint ; quod de jure communi est prohibitum ; ad id verò quod de jure civili sit illicitum tenentur duntaxat ex quo
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Whereas the direct contrary appears from History. For, says Livy, the Letters that were delivered as a Pledge of Fidelity, discover'd the Treason. And the Sons of Brutus the Consul, who were Conspirators, were stripped naked and scourged and beheaded upon no other Proofs; unless one could imagine that those Letters were a weaker Evidence against the Ambassadors, that had received them, and upon whom they were found, than against the Writers of them. So that this instance proves that an Ambassador, that is guilty not only by suspicion and circumstantial Evidence, but one whose Crime is evident and undoubted, ought notwithstanding to be set at Liberty by the privilege of the Law of Nations.

Kirchner, who joins with the rest in believing an Ambassador is to be punished, where he Offends, distinguishes however the Crimes and their Punishments, so that according to him, an Ambassador offending against the Law of God, of Nature or of Nations, is liable to Punishment; but contracts no guilt in such Actions as are made Crimes by the Customs or Laws of a State. Now this Distinction is taken from Foreigners to Ambassadors, since by the consent of Lawyers, Strangers or Foreigners are not guilty, unless they have committed something prohibited by the common Law; but with relation to the Civil Law they are unde-

ipsis innotuerit, vel ex quo in loco tantum moræ traxerint, ut ignorare non debuerint. In eo autem differunt, quòd peregrini ad tempus Legati simpliciter à legibus & statutis civilibus liberantur. Illud verò, quod cum is, tum alii qui in eadem sunt sententiâ cogitare debent, quòd etsi jus naturale efficere potest, ut Legatus puniri mereatur, à jure tamen inter gentes sit petendum in quo loco & à quo magistratu Legatus delinquens puniendus sit, quia non solum quod justum est, sed etiam justè sit agendum.

Besoldus, qui in eandem sententiam cum aliis transit, putat tamen sic distingui posse, ut si Legatus contra officium hominis deliquerit ad principem suum remitti; si contra officium Legati tanquam in hostem animadverti possit. Atque hæc distinctio congruit ei, quod in milite distinguitur, inter delictum commune, & delictum militare. Sed ut inter milites diversitas delictorum nihil facit ad diversitatem judicium, ita nec delicti conditio sive qualitas in Legatis quicquam ad judicii mutationem facere debet.

Besoldus cur delictum prioris generis non sit puniendum, rationem reddit, quia ad contemptum principis urgeret, si Legatus ejus alibi puniretur. Cur in posteriori ca-
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no Obligation, till they are acquainted with it, or have stay'd so long in that Place as to be no longer allow'd to be excusably Ignorant. But here is the difference, Strangers are free for some time, but Ambassadors are absolutely free from Civil Laws and Statutes. And this is what he and others of his Opinion ought to think of, that altho' by the Law of Nature an Ambassador deserves to be punished, yet the Law of Nations must determine where and by whom he is to be punished, since Justice must be done in a just manner.

Besoldus, who is of the same Opinion, frames this Distinction; that if an Ambassador be guilty as a Man, he is to be sent to his Prince; but if as an Ambassador, he may be punished as an Enemy. And this is agreeable to the Distinction, in a case of a Soldier between a common and a military Crime. But as among Soldiers, the diversity of the Crime makes no diversity of Punishment, so neither does the quality of the Crime in Ambassadors, make any alteration in the Judgment he is subject to.

Besoldus gives a Reason, why a Fault of the first kind should not be punished, namely, because to punish an Ambassador in another Place would seem a dishonour to his Principal;

198 *De Legati delinquentis, &c.*

su in ipsum sit animadvertendum nullam rationem reddit. Et cum in posteriori casu eadem ratio militet, cur non idem statuendum? nisi in hoc casu ad evitandum contemptum principis, cujus personam Legatus sustinet, (quod Dux Mediolanensis cum Legato Regis Galliae fecit) eum de nocte supplicio afficere satis visum fuerit.

C A P U T. XIV.

De Iudice comitum & familiae Legati delinquentium competente.

COMITES, inquit Grotius, & vasa Legatorum sui generis sanctimoniam habent, unde in antiquo fecialium carmine erat, rex facisne me regium nuntium populi Romani quiridium? vasa, comites meos? sed hac sancta sunt, inquit, accessorie & proinde quatenus Legato videtur. Itaque, si quid gravius deliquerint, postulari à Legato poterit ut eos dedat; quod si dedere eos Legatus nolit, mittendus is est ad eum qui misit, cum postulato ut eum puniat aut dedat. Paschalius idem sentit, qui, si atrox, inquit, crimen sit
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but he gives no Reason, why he is to be punished in the latter Case ; and since the same Reason is as strong in the latter Case, why should not his Conclusion be the same? Unless he thinks it sufficient, to avoid the affronting the Principal of the Ambassador, to do as the Duke of Milan did to the King of France, and to punish the Ambassador by Night.

C H A P. XIV.

The Proper Judge of the Attendants and Servants of an Ambassador.

GRotius says, that the Attendants and Moveables of Ambassadors are in a manner Sacred. Hence in the Heralds Old Form were these Words, Dost thou, O King, make me the King's Messenger of the Romans, my Carriages, and my Attendants? But these, says he, are sacred only as Appurtenances, and no farther than the Ambassador thinks fit. If therefore they be guilty of any grievous Crime, the Ambassador should be required to resign them up to Justice ; and if he refuses, he ought to be sent to his Principal to be punished or yielded up. Paschalius agrees in this, saying,
that

admissum, Legati comiti aut familiari ejus, non magis ignoscendum quàm favendum crimini. Deinde addit, si injussu Legati scelus apud ipsum ortum est, expostulatio ipsi est mittenda, tunc ad ejus officium pertinet justæ magistratûs querelæ facilem se præbere, & nocenti manu injectâ, eum in publicam custodiam tradere, ejusque supplicium urgere. Hâc flagrante tamque justâ severitate emet sibi bonam famam, & si magistratus reo ignoscat, erit quo Legatus lætetur, suâ severitate impunitatem reo impetratam esse, cui propè accedit, quod refert Hotomannus, cum Legati Regis Daniæ domesticum alter ejusdem familiæ in Angliâ occidisset, ab Elizabethâ Reginâ & Legatus petiisset ut de eo secundum justitiam Angliæ supplicium fumeretur, Regina ex benignitate permisit ut eum Daniam secum reduceret ubi pro merito puniretur.

Ratio, cur comites Legatorum, magis quàm ipsi Legati ubi delinquunt judiciis sint obnoxii, videtur, primò, quia minùs participant de iis qualitatibus, pro quibus Legati eximuntur, utpote primò, quia persona Legati jure gentium omnino sacrosancta habebatur, comites verò sancti sunt accessoriè tantùm, quatenus Legato

that if some heinous Crime be committed by an Attendant or Domestick of the Ambassador, it ought neither to be pardon'd nor encouraged; and then he adds, that if a Fact be done in the Ambassadors House without his Direction, a Complaint should be sent to him, and then 'tis his Duty, to give way to the just Representation of the Magistrate by seizing the Offender, sending him to Prison, and urging his Punishment. By such a conspicuous and just Severity, he will get Reputation; and if upon the score of his Impartiality the Magistrate pardons the Criminal, he will have Reason to rejoice, that his own Severity has procured Mercy for the guilty. Hotoman brings an instance of this Nature. When a Domestick of the Danish Ambassador in England had killed his Fellow-servant, and the Ambassador had petition'd Queen Elizabeth to punish him according to the English Laws, the Queen graciously gave him leave to carry him back to Denmark, to punish him there according to his demerit.

The Reason why the Attendants of Ambassadors are more subject to the Jurisdiction of the Place, where they Transgress, than Ambassadors themselves, seems to be this. First, They have a smaller share of those Qualities which exempt Ambassadors; for the Person of the Ambassador is sacred by the Law of Nations, but their Attendants are sacred only as Accessories,

gato videtur, ut ait Grotius, & Gentilis de comitibus scribens illos accenset cæteris Legatorum accessionibus. Secundò, quòd literæ credentiæ Legati intuitu non eorum, qui Legatum comitantur, conceduntur; & Princeps, qui Legatum mittit, pro eo fidem suam non pro aliis interponere intelligitur. Tertiò, quòd Legatus solus personam principis sustinet, quod est præcipuum immunitatis fundamentum: Comites verò sunt in Legatorum obsequiis. Secundò, ratio esse potest, quòd plus Legatis quàm comitibus eorum ab eo qui admittit credi oporteat; quia Legati ut plurimum mittuntur viri nobiles, perspectæ existimationis, numero pauci, quos facile est observare, & si quid perperam moluntur, impedire; Comites verò Legatorum sunt plerumque juvenes, morum exterorum studiosi, semper plures, aliquando numerosi, Legatis ipsis vix satis perspecti, observatu difficiles, & ad explorandum nonnunquam comparati; undè inquit Paschalius, hæc sæpe est factitia fabrica ut Legatione protegantur ii, qui per speciem comitum mittuntur, ad circumscribendum incautos nec opinantes, quemadmodum refert Dionysius Halicarnass. Tarquinius cum Legatis Latinorum, Romam misit corruptores quosdam (tanta illi in auro fiducia)

saries, as far as the Ambassadors please. Gentilis mentioning these Attendants, reckon them only among the Appendages of Ambassies. Again, Credentials are given in regard to the Ambassador and not to his Attendants, and the Principal is supposed to pass his Word for him, but not for others. Again. The Ambassador only represents his Principal, which is the chief Foundation of his Immunity, but his Attendants are at his command. Secondly, Another Reason may be, that the Prince who receives the Ambassador is obliged to trust him more than his Attendants, since Ambassadors are generally Gentlemen of approved Reputation, few in Number, and easy to be watched and prevented in any mischievous Design; but their Attendants are commonly Young Men, fond of Foreign Fashions, always a good many, sometimes very numerous, scarce known to the Ambassadors, hard to be watched, and sometimes sent on purpose to be Spies. For which Reason, says Gentilis, it is often a Contrivance to protect those by Ambassy, which under the appearance of Attendants are sent to deceive the unwary and thoughtless. Thus Dion Halcarnasseus informs us, that Tarquin sent Spies with his Ambassadors to Rome to bribe the People, who prevail'd upon all the Needy and the Slaves, to enter into a Conspiracy against the Senators. So great a Confidence did

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cia) qui egentissimum quemque & servitia perpulerunt contra Patricios conjurare. Et Scipio, quod narrat Livius, eum Legatis ad Syphacem, calorum loco, primos spectatæ virtutis atque prudentiæ servili habitu misit, qui, dum in colloquio Legati essent, vagi per castra aditus exitusque omnes, situm formamque castrorum specularentur.

Pro comitibus facere videtur, quod Ulpianus tradit, eos de vi publicâ teneri, non solum qui Legatos Oratores, sed qui eorum comites pulsâssent, aliâve injuriâ affecissent. Quod sive de vi injustâ, sive de vi Magistratuum publicâ intelligatur, eandem comitibus quàm ipsis Legatis securitatem præstat. Hotomannus censet, quòd Ulpiani sententia ad eos Legati comites spectat, quorum numerus & nomina in tabulas publicas referebantur; quemadmodum Modestinus, abesse reipublicæ causa videntur, inquit, comites Legatorum, qui ad ærarium aut in commentarium Principis delati vel relati sunt, id est, quorum nomina publicis actis inscripta quæ in ærario asservabantur, & quòd his eadem securitas quæ ipsis Legatis debebatur. De aliis, qui in Legatorum obsequium, pro eorum arbitrio comites asciscuntur, non idem statuendum arbitratur, vel con-
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be place in his Gold. Scipio, according to Livy, sent with the Ambassadors to Sypax, some chosen Men of approv'd Valour and Prudence in the Habit of Servants, to go about the Camp, and discover all the Entrances and Passages of it, and observe the Situation and Form of the Tents, while the Ambassadors were busied in treating.

What Ulpian says, seems to make for these Attendants, viz. That they are guilty by the Law de vi publicâ, who had not only assaulted the Ambassadors that are Orators, but even their Attendants, or had done them any other Injury. Which whether we understand of unjust Force, or the publick Power of Magistrates, it gives the same Security to Attendants, that it does to Ambassadors. Hotoman thinks this Sentence of Ulpian, belongs to those Attendants of Ambassadors, whose Number and Names were set down in the publick Tables. So Modestinus says, they seem to be absent upon the publick Account, who have their Names in the Treasury or Table-book of the Emperors, i. e. those Attendants whose Names were inscribed in the publick Registers kept in the Treasury, and that those had a Right to the same Security with the Ambassadors themselves. As for others, who attend upon the Ambassador at his pleasure, he thinks the same thing

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jicere licet, quod cùm ad potentiores principes plures Legati mitti consueverint, & inter eos unus aliquis sit princeps Legationis, cujus officium erat mandata exponere, qui vere Orator dici potest, quod Ulpianus per Legatos Oratores, principes Legationum intellexerit & per comites, alios Collegas, qui ejusdem Legationis una participes erant: quisquis sit sensus verborum, ejus legis Authoritas pendet à jure civili Romanorum, quo gentes aliæ non astringuntur. Plus pro comitibus facere videtur, quod Sallustius Bomilcarem comitem Jugurthæ, qui fide publica Romam venerat, contra jus Gentium ibi reum factum affirmat, nam cùm præsidium fidei publicæ Legatis omnibus deberi satis confirmatum sit, hoc concesso, quomodo juri Gentium congruat Legatorum comites in Judicium trahere merito dubitari potest. Sed respondetur, quod Legatis omnibus ex fide publicâ securitas sit præstanda, sed fides publica aliquando tacitò, aliquando expressè adhibetur. Tacitò Legatis fœderatorum & iis qui in pace veniunt, quorum admissio fidem publicam innuit. Expressè iis, qui ab hostibus, vel inter belli pericula accedunt, qui nisi & comitibus suis nominatim caveatur, ut literis salvi conductus prospici solet, se in aliorum po-

cannot be said of them; It is probable, that sending several Ambassadors were according to Custom deputed to the more powerful Princes, and one of them called the Chief of the Ambassy, whose Business it was to deliver his Instructions, and was therefore truly stiled an Orator, that Ulpian meant by Ambassadors that were Orators, the Chiefs of the Ambassy; and by their Attendants, the other Collegues appointed to go Ambassadors with them. Whatever be the sense of those Words, the Authority of that Law depends upon the Roman Civil Law, by which other Nations are not obliged. The Story of Sallust, seems to make more for the immunity of Attendants, which he tells of Bomilcar, the Attendant of Jugurtha, who coming to Rome upon the publick Faith, was there arraigned contrary to the Law of Nations. For since all Ambassadors are to be protected by the publick Faith, as is agreed on all Hands, it may well be question'd, how their Attendants can be dragged to Justice suitably to the Law of Nations? But to this it is answer'd, that Security must be given to all Ambassadors by the publick Faith, but the publick Faith is given sometimes tacitly, and sometimes expressly. It is given tacitly to the Ambassadors of Allies, and to those that come in Peace, their Admission implying the publick Faith. 'Tis given expressly to those who come from Enemies, or du-

potestatem credere, nequaquam tutum censent. Prioris generis Legatorum comites, accessorie & prout in Legatorum obsequio sunt, securitatem habent; iis verò, quibus expresse & nominatim prospectum est, securitas æquè principaliter, atque ipsis Legatis debetur. Jugurtha non Legatus, sed Rex Numidiæ erat, cui populus Romanus ob fratres regno spoliatos bellum inferebat, & cum duces suos pecuniis corruptos subodorarent, (Jugurthâ se populo Romano dedisse simulante) senatus L. Cassium Prætorem ad eum misit, qui fide publicâ interpositâ eum Romam duceret, quo facilius ejus judicio fontes patefierent. Cassius timido & rebus suis diffidenti persuadet, ut misericordiam potius quam vim Populi Romani experiretur, privatam præterea fidem suam interponit, quam ille non minoris quam publicam ducebat. Talis inquit Sallustius, eo tempore de Cassio fama erat. Ita Jugurtha cum Bomilcare, qui ei proximus & maximi fidus erat, Romam venit, & in tanto discrimine verisimile est, quod Jugurtha pro Bomilcare, proinde ac pro se etiam expresse fidem publicam acceperit, ita ut Sallustius intelligi possit, quod Bomilcar erat comes ejus, qui fide publicâ pro se & aliis nominatim datâ Romam venit, undè
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ring the Dangers of War, who think it dangerous to trust themselves in the Power of others, without providing for themselves and their Attendants expressly by Name, in the Passes which are given them. The Attendants of Ambassadors of the former Sort, enjoy a Security only as they wait upon the Ambassador. But they who are expressly named and provided for, have as full a Right to Protection as Ambassadors themselves. Jugurtha was no Ambassador, but King of Numidia; upon whom the Romans made War for robbing his Brothers of their Kingdom. But suspecting that their Generals were corrupted, and Jugurtha pretending himself willing to put himself under the Roman Protection, the Senate sent L. Cassius the Prætor to him, to bring him to Rome upon the publick Faith, that they might the better see where the Fault lay. Jugurtha fearing the worst, and finding his Affairs desperate, is prevail'd upon by Cassius to try the Clemency, rather than the Power of the Romans; relying as much upon the Honour of Cassius, who had assur'd him of Protection, as upon the publick Faith; so great, says Sallust, was the Reputation of Cassius at that time. Accordingly, Jugurtha came to Rome with Bomilcar his nearest Relation, and most trusty Friend. And at such a Juncture it is probable, Jugurtha received Assurance of Protection from

210 *De Legati delinquentis, &c.*

non accessorie sed principaliter fide publicâ munitus erat, nec minus quam ipse Jugurtha à populi Romani judicio immunis esse debuit.

Gentilis asserit Jura Legationis universis comitibus etiam stabulariis, scopariis & lixis competere, pro suâ tamen inquit, quod dicitur mensurâ quisque accipiat, quod secundum eorum opinionem, qui Legatum ipsum delinquentem puniendum statuunt, comitibus eorum delinquentibus parum est profuturum; & iis, qui Legatos delinquentes ad principes suos remittendos censent æquum opinor non videri potest, ut eorum stabulariis, scopariis, & lixis delinquentibus Principes idem præstare teneantur.

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the Publick, for Bomilcar as well as himself. So that Sallust may mean that Bomilcar attended him, that came to Rome upon the publick Faith, engaged to himself and others expressly by Name. Upon which Account he was publickly protected, not as an Accessory, but as a Principal, and ought to have been exempt from the Roman Jurisdiction as much as Jugurtha himself.

Gentilis asserts, that the Rights of Ambassy belong to all the Retinue of the Ambassador, his Grooms, Footmen and Scullions, but that every one is to be us'd according to his Station. And this, in the Opinion of those who are for punishing the Ambassador himself when he does amiss, will be of little Service to his Attendants. And they who think the Criminal Ambassadors ought to be sent back to their Principals, will hardly suppose, that Princes are obliged to deal in the same manner with Grooms, Footmen and Scullions.

FINIS.

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